



## **SURFACE MINING AND RECLAMATION ACT AND ASSOCIATED REGULATIONS**

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# SURFACE MINING AND RECLAMATION ACT OF 1975

As amended by:

Senate Bill 1300, Nejedly - 1980 Statutes  
Assembly Bill 110, Areias - 1984 Statutes  
Senate Bill 593, Royce - 1985 Statutes  
Senate Bill 1261, Seymour - 1986 Statutes  
Assembly Bill 747, Sher - 1987 Statutes  
Assembly Bill 3551, Sher - 1990 Statutes  
Assembly Bill 3903, Sher - 1990 Statutes  
Assembly Bill 1506, Sher - 1991 Statutes  
Senate Bill 1569, Rogers - 1992 Statutes  
Assembly Bill 3098, Sher - 1992 Statutes  
Assembly Bill 723, Sher - 1993 Statutes  
Assembly Bill 904, Sher - 1993 Statutes  
Assembly Bill 867, Sher - 1994 Statutes  
Senate Bill 273, Leslie - 1995 Statutes

Senate Bill 614, Craven et al - 1995 Statutes  
Assembly Bill 1373, Olberg - 1996 Statutes  
Senate Bill 1549, Monteith - 1996 Statutes  
Senate Bill 1664, Sher - 1997 Statutes  
Assembly Bill 297, Thomson - 1999 Statutes  
Senate Bill 244, Solis - 2000 Statutes  
Senate Bill 666, Sher - 2000 Statutes  
Senate Bill 483, Sher - 2002 Statutes  
Senate Bill 22, Sher - 2003 Statutes  
Senate Bill 649, Kuehl - 2003 Statutes  
Assembly Bill 1984, Wolk - 2004 Statutes  
Senate Bill 71 - 2005 Statutes  
Senate Bill 1110 - 2005 Statutes  
Senate Bill 668, Kuehl - 2006 Statutes

## Article 1. General Provisions

§ 2710. This chapter shall be known and may be cited as the Surface Mining and Reclamation Act of 1975.

§ 2711. (a) The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

(b) The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.

(c) The Legislature further finds that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

§ 2712. It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

(a) Adverse environmental effects are prevented or minimized and that mined lands

are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.

§ 2713. It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

§ 2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements associated with those structures, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction,

landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Department of Conservation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the Department of Conservation by the date specified by the Department of Conservation on these mining activities.

(2) Nothing in this subdivision shall require the Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the Department of Water Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources or the Reclamation Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with

subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

§ 2715. No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.

(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including

agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.

§ 2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2003, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) "Site specific plan," for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Title 14 of the California Code of Regulations and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774.

Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written comments within 15 days from the date of receipt of the

plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall not become operative until the date the State Mining and Geology Board notifies the Secretary of State in writing that the board has approved an ordinance adopted by the Board of Supervisors for the County of Yolo that governs in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resources Management Plan.

(g) This section shall remain in effect only until December 31, 2008, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2008, deletes or extends that date.

§ 2716. (a) Any interested person may commence an action on his or her own behalf against the board, the lead agency, the State Geologist, or the director for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel the board, the State Geologist, or the director to carry out any duty imposed upon them pursuant to this chapter.

(b) For purposes of this section, "person" means an individual, firm, association, corporation, organization, or partnership, or a city, county, district, or the state or any department or agency of the state.

§ 2717. (a) The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.

(b) For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the department shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state or local agency, a list identifying all of the following:

(1) Surface mining operations for which a report has been submitted pursuant to Section 2207 that

indicates all of following:

(A) The reclamation plan and the financial assurances have been approved pursuant to this chapter.

(B) Compliance with state reclamation standards developed pursuant to Section 2773.

(C) Compliance with the financial assurance guidelines developed pursuant to Section 2773.1.

(D) The annual reporting fee has been submitted to the Department of Conservation.

(2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.

(3) Surface mining operations for which an inspection is required and for which an inspection notice has been submitted by the lead agency pursuant to Section 2774 that indicates both compliance with the approved reclamation plan and that sufficient financial assurances, pursuant to Section 2773.1, have been approved and secured.

§ 2718. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 2719. Notwithstanding any other provision of law, neither the state nor any county, city, district, or other political subdivision shall be exempt from any fee imposed upon a mining operation pursuant to subdivision (d) of Section 2207.

## **Article 2. Definitions**

§ 2725. Unless the context otherwise requires, the definitions set forth in this article shall govern the construction of this chapter.

§ 2726. "Area of regional significance" means an area designated by the Board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

§ 2727. “Area of statewide significance” means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

§ 2727.1 “Idle” means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

§ 2728. “Lead agency” means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a reclamation plan pursuant to this chapter.

§ 2729. “Mined lands” includes the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

§ 2730. “Mining waste” includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

§ 2731. “Operator” means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

§ 2732. “Overburden” means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

§ 2732.5. “Permit” means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

§ 2733. “Reclamation” means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

§ 2734. “State policy” means the regulations adopted by the board pursuant to Section 2755.

§ 2735. “Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching.
- (b) The production and disposal of mining waste.
- (c) Prospecting and exploratory activities.

### **Article 3. District Committees**

§ 2740. In carrying out the provisions of this chapter, the board may establish districts and appoint one or more district technical advisory committees to advise the board.

In establishing districts for these committees, the board shall take into account physical characteristics, including, but not limited to, climate, topography, geology, type of overburden, and principal mineral commodities. Members of the committees shall be selected and appointed on the basis of their professional qualifications and training in mineral resource conservation, development and utilization, land use planning, mineral economics, or the reclamation of mined lands.

§ 2741. The members of the committee shall receive no compensation for their services, but shall be entitled to their actual and necessary expenses incurred in the

performance of their duties.

#### **Article 4. State Policy for the Reclamation of Mined Lands**

§ 2755. The board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

§ 2756. State policy shall apply to the conduct of surface mining operations and shall include, but shall not be limited to, measures to be employed by lead agencies in specifying grading, backfilling, resoiling, revegetation, soil compaction, and other reclamation requirements, and for soil erosion control, water quality and watershed control, waste disposal, and flood control.

§ 2757. The state policy adopted by the board shall be based upon a study of the factors that significantly affect the present and future condition of mined lands, and shall be used as standards by lead agencies in preparing specific and general plans, including the conservation and land use elements of the general plan and zoning ordinances. The state policy shall not include aspects of regulating surface mining operations which are solely of local concern, and not of statewide or regional concern, as determined by the board, such as, but not limited to, hours of operation, noise, dust, fencing, and purely aesthetic considerations.

§ 2758. Such policy shall include objectives and criteria for all of the following:

- (a) Determining the lead agency pursuant to the provisions of Section 2771.
- (b) The orderly evaluation of reclamation plans.
- (c) Determining the circumstances, if any, under which the approval of a proposed surface mining operation by a lead agency need not be conditioned on a guarantee assuring reclamation of the mined lands.

§ 2759. The state policy shall be continuously reviewed and may be revised. During the formulation or revision of the policy, the board shall consult with, and carefully evaluate the

recommendations of, the director, any district technical advisory committees, concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

§ 2760. The board shall not adopt or revise the state policy, unless a public hearing is first held respecting its adoption or revision. At least 30 days prior to the hearing, the board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

§ 2761. (a) On or before January 1, 1977, and, as a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state which are urbanized or are subject to urban expansion or other irreversible land uses which would preclude mineral extraction:

(1) Standard metropolitan statistical areas and such other areas for which information is readily available.

(2) Other areas as may be requested by the board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the board, the State Geologist shall classify, on the basis solely of geologic factors, and without regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition which has been accepted by the board, or any other areas as may be specified by the board, as one of the following:

(1) An area that contains mineral deposits and is not of regional or statewide significance.

(2) An area that contains mineral deposits and is of regional or statewide significance.

(3) Areas containing mineral deposits, the significance of which requires further evaluation.

(c) The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(d) The State Geologist shall transmit the information to the board for incorporation into the state policy and for transmittal to lead agencies.

§ 2762. (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any environmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(1) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(2) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations

and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

§ 2763. (a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

§ 2764. (a) Upon the request of an operator or other interested person and payment by the requesting person of



the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the board.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with Section 2790) if mineral resource management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with Section 2755).

## **Article 5. Reclamation of Mined Lands and the Conduct of Surface Mining Operations**

§ 2770. (a) Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

(b) Any person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a

reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, reclamation plans may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together were proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter.

(c) If a person with an existing surface mining operation has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, the lead agency shall administratively review those existing financial assurances in accordance with subdivision (d) prior to January 1, 1992. The review of existing financial assurances shall not be considered a project for purposes of Division 13 (commencing with Section 21000). Any person with an existing surface mining operation which does not have financial assurances that received lead agency approval prior to January 1, 1991, shall submit financial assurances for reclamation for review in accordance with subdivision (d).

(d) The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (e) or (i), unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to nonapproval of the reclamation plan, or has filed on or before January 1,

1994, an appeal pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that appeal is pending before the board, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.

(e) Any person who, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve reclamation plans or financial assurances as required by subdivisions (c) and (d), may appeal that action or inaction to the board.

(f) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

(g) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or any longer period as may be mutually agreed upon by the board and the person filing the appeal. In hearing an appeal, the board shall only determine whether the reclamation plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A reclamation plan or financial assurances determined to meet these requirements shall be approved. A reclamation plan or financial assurances determined not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the board, to correct the noted deficiencies and submit the revised reclamation plan or the revised financial assurances to the lead agency for review and approval.

(h)(1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency

for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

(2) The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

(4) Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining

operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) Any enforcement action which may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h) or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

§ 2770.5. Whenever surface mining operations are proposed in the 100-year flood plain for any stream, as shown in Zone A of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the lead agency receiving the application for the issuance or renewal of a permit to conduct the surface mining operations shall notify the Department of Transportation that the application has been received. The Department of Transportation shall have a period of not more than 45 days to review and comment on the proposed surface mining operations with respect to any potential damage to the state highway bridge from the proposed surface mining operations. The lead agency shall not issue or renew the permit until the Department of Transportation has submitted its comments or until 45 days from the date the application for the permit was submitted, whichever occurs first.

§ 2770.6.

(a) Whenever surface mining operations are proposed within the boundaries of the San Gabriel Basin Water Quality Authority that may penetrate the groundwater, and whenever proposed reclamation activities may impact groundwater quality, the lead agency reviewing an application to conduct surface mining operations, or reviewing an application for the approval of a reclamation plan, shall notify and provide copies of the subject application to the appropriate California regional water quality control board, and any watermaster for the groundwater recharge basin. Notwithstanding any other provision

of law, the appropriate California regional water quality control board may impose an administrative fee on the applicant to cover its costs associated with the review of, and preparation of, comments on the subject application, as required pursuant to this section.

(b) Each agency shall have 60 days to review and comment on the proposed surface mining operation described in subdivision (a) and the adoption of any reclamation plan therefor. Each agency shall comment on the existing groundwater quality and the potential impacts to water quality that may result from the mining operations and the proposed reclamation plan, and shall recommend methods and procedures to protect groundwater quality and prevent groundwater degradation. Each agency shall also comment on the proposed mining activities, including the conduct of excavation and backfilling operations in contact with groundwater, and the impact of any proposed alternative land uses on groundwater quality. When the proposed surface mining operations or reclamation plan will impact the groundwater, the lead agency shall not approve the reclamation plan without requiring actions to ensure the reasonable protection of the beneficial uses of groundwater and the prevention of nuisance. Each agency shall have 60 days to review and comment or until 60 days from the date of application, whichever occurs first.

(c) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

*HISTORY*

*Added Stats 2000 ch 515 § 1 (SB 244).*

§ 2771. Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the board. The board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The board shall designate the public agency which shall serve as the lead agency, giving due consideration to the capability of the agency to fulfill

adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility.

§ 2772. (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands, and who plans to conduct surface mining operations on the lands.

(b) All documentation for the reclamation plan shall be submitted by the lead agency to the department at one time.

(c) The reclamation plan shall include all of the following information and documents:

(1) The name and address of the surface mining operator and the names and addresses of any persons designated by the operator as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation and termination of surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) The size and legal description of the lands that will be affected by the surface mining operation, a map that includes the boundaries and topographic details of the lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands, the location of all proposed access roads to be constructed in conducting the surface mining operation, and the names and addresses of the owners of all surface interests and mineral interests in the lands.

(6) A description of, and a plan for, the type of surface mining to be employed, and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

(7) A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in

the land have been notified of the proposed use or potential uses.

(8) A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including both of the following:

(A) A description of the manner in which contaminants will be controlled, and mining waste will be disposed.

(B) A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion and sedimentation will occur.

(9) An assessment of the effect of implementation of the reclamation plan on future mining in the area.

(10) A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

(11) Any other information which the lead agency may require by ordinance.

(d) An item of information or a document required pursuant to subdivision (c) that has already been prepared as part of a permit application for the surface mining operation, or as part of an environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000), may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the director for review. To the extent that the information or document referenced in the reclamation plan is used to meet the requirements of subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this article.

(e) Nothing in this section is intended to limit or expand the department's authority or responsibility to review a document in accordance with Division 13 (commencing with Section 21000).

#### § 2772.5.

(a) A reclamation plan by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands within the boundaries of the San Gabriel Basin Water Quality Authority, and who plans to conduct surface mining operation on those lands, in addition to the information required pursuant to subdivision (c) of Section 2772, shall include a description of any programs necessary to monitor the effects of mining and reclamation operations on air, water, and soil quality, on the surrounding area, backfill characteristics, geologic conditions, and slope stability, similar to the

California Environmental Quality Act document for the reclamation project.

(b) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

*HISTORY*

*Added Stats 2000 ch 515 § 2 (SB 244)*

§ 2772.6.

(a) In addition to meeting the requirements of Section 2773.1, the amount of financial assurances required of a surface mining operation within the boundaries of the San Gabriel Basin Water Quality Authority for any one year shall be in an amount not less than that required to ensure reclamation of the disturbed areas is completed in accordance with the approved reclamation plan.

(b) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel/Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

*HISTORY*

*Added Stats 2000 ch 515 § 2 (SB 244)*

§ 2772.7. The lead agency, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a "Notice of Reclamation Plan Approval" with the county recorder. The notice shall read: "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the \_\_\_\_\_, a copy of which is on file with the \_\_\_\_\_."

*HISTORY*

*Added Stats 2006 ch 869 §20 (SB668)*

§ 2773. (a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment,

and erosion control.

(b) By January 1, 1992, the board shall adopt regulations specifying minimum, verifiable statewide reclamation standards. Subjects for which standards shall be set include, but shall not be limited to, the following:

(1) Wildlife habitat.

(2) Backfilling, regrading, slope stability, and recontouring.

(3) Revegetation.

(4) Drainage, diversion structures, waterways, and erosion control.

(5) Prime and other agricultural land reclamation.

(6) Building, structure, and equipment removal.

(7) Stream protection.

(8) Topsoil salvage, maintenance, and redistribution.

(9) Tailing and mine waste management.

These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site.

§ 2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e), which the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(4) The financial assurances shall be made payable to the lead agency and the department. Financial assurances that were approved by the lead agency prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface

mining operation has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, to the public agency, to the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the lead agency and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency.

(b) If the lead agency or the board, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, either the lead agency or the director shall do all of the following:

(1) Notify the operator by personal service or certified mail that the lead agency or the director intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the director and the operator.

(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2).

(4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the director, that reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new owner and have been approved by the lead agency in accordance with Section 2770.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b). However, in cases where the board is not the lead agency pursuant to Section 2774.4, the director may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

(1) The financial incapability of the operator or the abandonment of the mining operation has come to the attention of the director.

(2) The lead agency has been notified in writing by the director of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following has occurred:

(A) The lead agency has been notified in writing by the director that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the director in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

The director shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

(e) The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms may not include financial tests, or surety

bonds executed by one or more personal sureties. These mechanisms may include reclamation bond pool programs.

(f) On or before March 1, 1993, the board shall adopt guidelines to implement this section. The guidelines are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and are not subject to review by the Office of Administrative Law.

§ 2773.15. Notwithstanding Section 2773.1, a surety bond that was executed by any personal surety that was approved by the lead agency prior to February 13, 1998, to ensure that reclamation is performed in accordance with a reclamation plan approved by a lead agency prior to that date, may be utilized to satisfy the requirements of this chapter, if the amount of the financial assurance required to perform the approved reclamation plan, as amended or updated from time to time, does not change from the amount approved prior to February 13, 1998.

§ 2773.2. The mineral owner and owner of the surface estate, if legally entitled to do so, shall allow access to the property on which the mining operation is located to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan and expending those financial assurances for reclamation, in order that reclamation may be carried out by the governmental agency or company, in accordance with the reclamation plan.

#### *HISTORY*

*Repealed then added, Stats 2006 ch 869 §20 (SB668)*

§ 2773.3. (a) In addition to other reclamation plan requirements of this chapter and regulations adopted by the board pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:

(1) The reclamation plan requires that all excavations be backfilled and graded to do both of the following:

(A) Achieve the approximate original contours of the mined lands prior to mining.

(B) Grade all mined materials that are in excess of the materials that can be placed back into excavated area, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.

(2) The financial assurances are sufficient in amount to provide for the backfilling and grading required by paragraph (1).

(b) For purposes of this section, the following terms have the following meaning:

(1) "Native American sacred site" means a specific area that is identified by a federally recognized Indian Tribe, Rancheria or Mission Band of Indians, or by the Native American Heritage Commission, as sacred by virtue of its established historical or cultural significance to, or ceremonial use by, a Native American group, including, but not limited to, any area containing a prayer circle, shrine, petroglyph, or spirit break, or a path or area linking the circle, shrine, petroglyph, or spirit break with another circle, shrine, petroglyph, or spirit break.

(2) "Area of special concern" means any area in the California desert that is designated as Class C or Class L lands or as an Area of Critical Environmental Concern under the California Desert Conservation Area Plan of 1980, as amended, by the United States Department of the Interior, Bureau of Land Management, pursuant to Section 1781 of Title 43 of the United States Code.

§ 2773.5. Section 2773.3 does not apply to either of the following:

(a) Any surface mining operation in existence on January 1, 2003, for which the lead agency has issued final approval of a reclamation plan and the financial assurances prior to September 1, 2002.

(b) Any amended reclamation plan or financial assurances that are necessary for the continued operation or expansion of a surface mining operation in existence on January 1, 2003, that otherwise satisfies the requirements of subdivision (a).

§ 2774. (a) Every lead agency shall adopt ordinances in accordance with state policy that establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its

jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause an inspection to be conducted by a state licensed geologist, state licensed civil engineer, state licensed landscape architect, or state licensed forester, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board that shall include the professional licensing and disciplinary information of the person who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester, who conducted the inspection.

(c) Prior to approving a surface mining operation's

reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of this chapter and Article 9 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations and the lead agency's mining ordinance in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's response to the director's comments shall describe whether the lead agency proposes to adopt the director's comments to the reclamation plan, plan amendment, or financial assurance. If the lead agency does not propose to adopt the director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator. The lead agency shall also give the director at least 30 days' notice of the time, place, and date of the hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the lead agency. If no hearing is required by this chapter, or by the local



ordinance, of other state law, then the lead agency shall provide 30 days' notice to the director that it intends to approve the reclamation plan, plan amendment, or financial assurance. The lead agency shall send to the director its final response to the director's comments within 30 days following its approval of the reclamation plan, plan amendment, or financial assurance during which period the department retains all powers, duties, and authorities of this chapter.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

§ 2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified

mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) Any operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall be used for no purpose other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.

(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.

(e) Upon a complaint by the director, the department, or the board, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation adopted pursuant to this chapter or Section 2207. The Attorney General may bring such an action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of competent jurisdiction compelling the operator to comply with this chapter and Section 2207.

(f) The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:

(1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.

(2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health or safety, or to the environment.

The director shall comply with this section in initiating enforcement actions.

(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

§ 2774.2. (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition that legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the director, for review of the order. If the operator does not petition for review within the time limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order

pursuant to this section, the record shall consist of the record before the lead agency or the director, and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, any order of the lead agency or the director setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) Any order of the legislative body or the board issued under subdivision (c) shall become effective upon issuance thereof, unless the operator petitions the superior court for review as provided in subdivision (e). Any order shall be served by personal service or by certified mail upon the operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the lead agency or the director within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) Any operator aggrieved by an order of the legislative body or the board issued under subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. Any operator aggrieved by an order of a lead agency or the director setting administrative penalties under subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

§ 2774.3. The board shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the board pursuant

to this chapter.

§ 2774.4. (a) If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a).

(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allows the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a) the board shall, based on the record of the public hearing, adopt

written findings which explain all of the following:

- (1) The action to be taken by the board.
- (2) Why the board decided to take the action.
- (3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.

§ 2774.5. (a) If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans

submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy.

(d) Reclamation plans approved by the board pursuant to this section shall not be subject to modification by the lead agency at a future date but may be amended by the board. Reclamation plans approved by the board shall be remanded to the lead agency upon certification of the lead agency's ordinance, and the lead agency shall approve the reclamation plan as approved by the board, except that a subsequent amendment as may be agreed upon between the operator and the lead agency may be made according to this chapter. No additional public hearing shall be required prior to the lead agency's approval. Nothing in this section shall be construed as authorizing the board to issue a permit for the conduct of mining operations.

§ 2775. (a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency, or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance, may, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, appeal to the board.

(b) The board may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

(c) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the

evidence but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the board determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead agency shall schedule a public hearing to reconsider its action.

§ 2776. No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

The reclamation plan required to be filed under subdivision (b) of Section 2770, shall apply to operations conducted after January 1, 1976, or to be conducted.

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.

§ 2777. Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with, and approved by, the lead agency.

§ 2778. (a) Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless it can be demonstrated to the satisfaction of the lead agency that the release of that information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The lead agency shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the director and to persons authorized in writing by the operator and by the owner.

(b) A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to

this chapter shall be furnished to the director by lead agencies on request.

§ 2779. Whenever one operator succeeds to the interest of another in any incompleting surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.

### **Article 6. Areas of Statewide or Regional Significance**

§ 2790. After receipt of mineral information from the State Geologist pursuant to subdivision (c) of Section 2761, the board may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area.

§ 2791. The board shall seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance.

§ 2792. Neither the designation of an area of regional or statewide significance nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code, pursuant to the Subdivision Map Act (Division 2 [commencing with Section 66410] of Title 7 of the Government Code), or by a building permit or other authorization to commence development, upon which such person relies and has changed his position to his substantial detriment, and, which permit or authorization was issued prior to the

designation of such area pursuant to Section 2790. If a developer has by his actions taken in reliance upon prior regulations obtained vested or other legal rights that in law would have prevented a local public agency from changing such regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

§ 2793. The board may, by regulation adopted after a public hearing, terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

### **Article 7. Fiscal Provisions**

§ 2795. (a) Notwithstanding any other provision of law, the first two million dollars (\$2,000,000) of moneys from mining activities on federal lands disbursed by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. Sec. 191), shall be deposited in the Surface Mining and Reclamation Account in the General Fund, which account is hereby created, and may be expended, upon appropriation by the Legislature, for the purposes of this chapter.

(b) Proposed expenditures from the account shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the account shall be subject to all of the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

§ 2796.5 (a) The director, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

(1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.

(2) No reclamation plan is in effect for the mined lands.

(3) No financial assurances exist for the mined lands.

(4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the director shall consider whether the action would accomplish one of the following:

(1) The protection of the public health and safety or

the environment from the adverse effects of past surface mining operations.

(2) The protection of property that is in danger as a result of past surface mining operations.

(3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The director may also consider the potential liability to the state in deciding whether to act under this section. Neither the director, the department, nor the state, or its appointees, employees, or agents in conducting remediation or reclamation under this section, shall be liable under applicable state laws, and it is the intent of the Legislature that those persons or entities not be liable for those actions under federal law.

(d)(1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the director's judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or governmental agency, and regardless of whether injunctive relief is being sought.

(2) The director may authorize the work to be performed through department staff, with the cooperation of any other governmental agency, or through contracts, and may use rented tools or equipment, either with or without operators furnished.

(3) In cases of emergency where quick action is necessary, notwithstanding any other provision of law, the director may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for the rental of tools or equipment and in addition the furnishing of labor and materials necessary to accomplish the work. These emergency contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(4) The director shall be permitted reasonable access to the abandoned mined lands as necessary to perform any remediation or reclamation work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld or otherwise unobtainable, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part

3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, the director may enter the property without consent or the issuance of a warrant.

(e) For any remediation or reclamation work accomplished, or other necessary remedial action taken by any governmental agency, the operator, landowner, and the person or persons who allowed or caused any pollution or nuisance are liable to that governmental agency to the extent of the reasonable costs actually incurred in remediating, reclaiming, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the director to the extent of the director's contribution to the costs of the remediation, reclamation, cleanup, and abatement or other corrective action.

(f) (1) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the remediation or reclamation was accomplished, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the lien. The lien shall continue for 10 years from the time of the recording of the notice of the lien unless sooner released or otherwise discharged, and may be renewed.

(2) Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the director, for a money judgment. Money recovered by a judgment in favor of the director shall be used for the purposes of this chapter.

(g) If the operation has been idle for more than one year without obtaining an approved interim management plan, an application for the review of an interim management plan filed for the purpose of preventing the director from undertaking remediation or reclamation of abandoned mined lands under this section shall be voidable by the lead agency or the board upon notice and hearing by the lead agency or the board. In the event of conflicting determinations, the decision of the board shall prevail.

(h) “Remediate,” for the purposes of this section, means to improve conditions so that threat to or damage to public health and safety or the environment are lessened or ameliorated, including the cleanup and abatement of pollution or nuisance or threatened pollution or nuisance.

(i) “Threaten,” for the purposes of this section, means a condition creating a probability of harm, when the probability and potential extent of harm make it reasonably necessary to take action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(j) This section shall apply to abandoned mined lands on which the mining operations were conducted after January 1, 1976.

(k) The director may act under this section only upon the appropriation of funds by the Legislature for the purposes of carrying out this section.

(l) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

#### *HISTORY*

*Added Stats 2000 ch 713 § 2 (SB 666), operative until January 1, 2003.*

*Sunset provision repealed Stats 2006 ch 869 §24 (SB668).*

# ANNUAL REPORTING REQUIREMENTS AND REPORTING FEE

Public Resources Code Section 2207

(Repealed and added by AB 3551 [Sher, Chapter 1097, Statutes of 1990]),  
(Amended by AB 3903 [Sher, Chapter 1101, Statutes of 1990], AB 1506 [Sher, Chapter 845,  
Statutes of 1991], AB 3098 [Sher, Chapter 1077, Statutes of 1992], SB 741 [Rogers, Chapter 1287, Statutes  
of 1993], AB 297 [Thomson, Chapter 869, Statutes of 1999], SB 649 [Kuehl, Chapter 794, Statutes of 2003],  
SB1110 [Chapter 383, Statutes of 2005], and SB668 [Kuehl, Chapter 869, Statutes of 2006])

§ 2207. (a) The owner or the operator of a mining operation within the state shall forward to the director annually, not later than a date established by the director, upon forms approved by the board from time to time, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Bureau of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 1/2-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land

newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) (1) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in paragraphs (1) to (16), inclusive, of subdivision (a).

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan, in order that the reclamation can be carried out by the entity or company, in accordance with the provisions of the reclamation plan.

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision (b), (c), (d), or (h) of Section 2770, or whether an appeal before the board or lead agency governing body is pending under subdivision (e) or (h) of Section 2770. The director shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine



number if one has not been issued by the Bureau of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the director and the lead agency. Any person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed four thousand dollars (\$4,000) annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees may not exceed, and may be less than, the amount of three million five hundred thousand dollars (\$3,500,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) (i) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Section 2796.5 and as authorized herein for the remediation of abandoned mines.

(ii) Notwithstanding subdivision (j) of Section 2796.5, fees collected pursuant to clause (i) may also be used to remediate features of historic abandoned mines and lands that they impact. For the purposes of this section, historic abandoned mines are mines for which operations have been conducted before January 1, 1976, and include, but are not limited to, historic gold and silver mines.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 11/2 percent per month, computed

from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means a mining operation of any kind or character whatever in this state, including, but not limited to, a mining operation that is classified as a "surface mining operation" as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, "mining operation" may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (b) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the

reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

(h) The approval of a form by the board pursuant to this section is not the adoption of a regulation for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and is not subject to that chapter.

# **SITE INSPECTIONS CONDUCTED BY THE DEPARTMENT OF CONSERVATION**

Public Resources Code Section 2208  
(Amended by AB 2943 [Allen, Chapter 999, Statutes of 1992])

§ 2208. The director or a qualified assistant may at any time enter or examine any and all mines, quarries, wells, mills, reduction works, refining works, and other

mineral properties or working plants in this state in order to gather data to comply with the provisions of this chapter.

## **PURCHASE AND USE OF MINED MATERIALS BY STATE AND LOCAL AGENCIES**

Public Contract Code Sections 10295.5 and 20676  
(Amended by AB 3098 [Sher, Chapter 1077, Statutes of 1992], AB 723 [Sher, Chapter 278, Statutes of 1993], SB 649 [Kuehl, Chapter 794, Statutes of 2003], SB1110 [Chapter 383, Statutes of 2005], and SB668 [Kuehl, Chapter 869, Statutes of 2006])

10295.5. (a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) Notwithstanding any other provision of law, no state agency shall contract with a person who is not a surface mining operator, but who is supplying or utilizing sand, gravel, aggregates, or other minerals, to perform work for, or supply materials to, a state agency, unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(c) For purposes of this section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.

20676. A contractor or a mining operator shall not sell any sand, gravel, or other minerals, as defined in subdivision (c) of Section 10295.5, to a local agency, unless the operation is not subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), or unless the contractor or mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

## **LIABILITY LIMITATIONS FOR REMEDATION/RECLAMATION OF ABANDONED MINES**

See Water Code Section 13397 et seq.  
(Added by SB 1108 [Leslie, Chapter 878, Statutes of 1995])

### ***NOTE***

*While this section amends the California Water Code, liabilities under the federal Clean Water Act may remain until similar federal amendments are adopted.*

# STATE MINING AND GEOLOGY BOARD

## RECLAMATION REGULATIONS

### Article 1. Surface Mining and Reclamation Practice

§ 3500. Purpose. It is the purpose of this subchapter to establish state policy for the reclamation of mined lands and the conduct of surface mining operations in accord with the general provisions set forth in Public Resources Code, Division 2, Chapter 9, Section 2710 et seq. (Surface Mining and Reclamation Act of 1975, as amended by Statutes of 1980).

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2710-2795, Public Resources Code.*

#### HISTORY

1. *New Chapter 8, Subchapter 1 (Sections 3500-3508, not consecutive, and Appendices A, B and C) filed 3-29-77; effective thirtieth day thereafter (Register 77, No. 14).*
2. *Amendment of NOTE filed 8-10-82; effective thirtieth day thereafter (Register 82, No. 33).*
3. *Repealer and new section filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18).*

§ 3501. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

**Agricultural Activity.** The cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation of these products for market.

**Angle of Repose.** The maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material.

**Backfill.** Earth, overburden, mine waste or imported material used to replace material removed during mining.

**Borrow Pits.** Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

**Critical Gradient.** The maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

**Excavations for On-Site Construction.** Earth material moving activities that are required to prepare a site for construction of structures, landscaping, or other land improvements (such as excavation, grading, compaction, and the creation of fills and embankments), or that in and of themselves constitute engineered works (such as dams, road cuts, fills, and catchment basins).

**Grading.** To bring an existing surface to a designed form by cutting, filling, and/or smoothing operations.

**Minerals.** Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

**Person.** Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

**Reclamation Plan.** The applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after January 1, 1976, as called for in Section 2772 of the Act.

**Resoiling.** The process of artificially building or reconstructing a soil profile.

**Stream Bed Skimming.** Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

**Surface Mining Operations.** In addition to the provisions of Section 2735 of the Act, borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of these regulations.

**Topsoil.** The upper part of the soil profile that is relatively rich in humus, which is technically known as the A-horizon of the soil profile.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2735, Public Resources Code.*

#### HISTORY

1. *Repealer of former Section 3501, and renumbering and amendment of former Section 3502 to Section*

3501 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Registers 82, No. 33 and 79, No. 35.

2. Change without regulatory effect deleting definition of "Intermittent Operation" filed 1-10-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 2).
3. Amendment adding definition of "Agricultural Activity" file 9-18-79; operative 10-18-97 (Register 97, No. 38).
4. Change without regulatory effect repealing definition of "Temporarily Deactivated Operation" filed 3-29-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 13).

#### § 3502. The Reclamation Plan.

(a) Objectives. Reclamation plans shall be developed to attain the objectives of Public Resources Code Section 2712(a)-(c).

(b) Reclamation Plan Elements. In addition to the information required by Public Resources Code Section

2772, the following elements shall be included in the reclamation plan:

(1) The environmental setting of the site of operations and the effect that possible alternate reclaimed site conditions may have upon the existing and future uses of surrounding lands.

(2) The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site.

(3) The designed steepness and proposed treatment of the mined lands' final slopes shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other factors. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. Whenever final slopes approach the critical gradient for the type of material involved, regulatory agencies shall require an engineering analysis of the slope stability. Special emphasis on slope stability and design shall be necessary when public safety or adjacent property may be affected.

(4) Areas mined to produce additional materials for backfilling and grading, as well as settlement of filled areas, shall be considered in the reclamation plan. Where ultimate site uses include roads, building sites, or other improvements sensitive to settlement,

the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice.

(5) Disposition of old equipment.

(6) Temporary stream or watershed diversions.

(c) Adequacy. In judging the adequacy of a particular reclamation plan in meeting the requirements described herein and within the Act, the lead agency shall consider the physical and land-use characteristics of the mined lands and their surrounding area pursuant to Public Resources Code Section 2773.

(d) Each surface mining operation as defined in Public Resources Code Section 2735 and Title 14 California Code of Regulations Section 3501, shall have no more than one approved reclamation plan applicable to that operation except as described in subsection (i) to this section. An amended reclamation plan shall be approved by the lead agency prior to the commencement of activities determined to be a substantial deviation from the approved plan. For purposes of the Surface Mining and Reclamation Act of 1975 and regulations adopted pursuant thereto, a substantial deviation shall be defined as a change or expansion to a surface mining operation that substantially affects the completion of the previously approved reclamation plan, or that changes the end use of the approved plan to the extent that the scope of the reclamation required for the surface mining operation is substantially changed. In determining whether a change or expansion constitutes a substantial deviation, the lead agency shall take into consideration the following factors:

(1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining;

(2) A substantial extension of the termination date of the mining operation as set out in the approved reclamation plan;

(3) Changes that would substantially affect the approved end use of the site as established in the reclamation plan;

(4) The consistency of any proposed change to the operation with the previously adopted environmental determinations.

(5) Any other changes that the lead agency deems substantial deviations as defined in the subsection.

(e) An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California code of Regulations commencing with Section 3700.

(f) In the event that a proposed change is determined not to be a substantial deviation from an approved reclamation plan, then current reclamation standards need only apply to the amended portion of the plan. An amendment to the originally approved reclamation plan that includes an expanded operating area shall be approved by the lead agency prior to implementation of the activities in the expansion area.

(g) Should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The amended reclamation plan shall incorporate current reclamation standards for the entire area governed by the plan that is impacted by the deviation. If reclamation has been substantially initiated at the time that a lead agency determines that an amended reclamation plan is required, the operator may complete reclamation of those areas according to the previously approved reclamation plan, except for those areas that are or will be affected by the proposed expanded mining activities which shall be subject to the requirements of the amended reclamation plan.

(h) Where a surface mining operation has in effect an approved reclamation plan and approved financial assurance covering a surface mining operation, and the mining operator proposes to utilize a new surface area, not included within the approved reclamation plan, for purposes of creating a new and separate pit, quarry, or other excavation, the operator may, at the option of the operator do one of two things:

(1) Amend the existing reclamation plan to encompass the new area designated for use as a pit, quarry, or excavation, together with any other changes necessary to make the reclamation plan, as amended, conform to the Act and these regulations. If such an amended plan is proposed, the amended plan must conform to the current reclamation standards required by the Act and the regulations, as to the new area(s) designated as a quarry, pit or excavation and any processing facilities, roads, sumps, drainage systems or storage or processing areas, which that new area will utilize within the previously approved reclamation plan area or within the new area. Concurrently with the approval of the amended reclamation plan to encompass the new area

operations, unless such a provision already is in the existing reclamation plan, the lead agency may require an amendment to the existing reclamation plan to provide for the immediate commencement of the reclamation of any mined lands which no longer are required for mining operations.

(2) Obtain approval of a new reclamation plan covering the new area and any facilities, roads, sumps, drainage systems, or storage or processing areas, utilized in connection with operations in the new area. Any areas encompassed within such plan shall conform to the reclamation standards of the Act and these regulations that are in effect at the time the reclamation plan is approved.

(i) The following exemptions to this section shall apply:

(1) Where a single surface mining operation has separate facilities located within different lead agency jurisdictions, and where these facilities are separated by a distinct and significant physical boundary such as a major highway, stream channel, or the like, the operator may obtain separate reclamation plans and financial assurances for the facilities from the lead agencies in which those facilities are located.

(2) Those surface mining operations that have more than one reclamation plan approved on or before October 1, 2002 shall not be subject to the requirements for a single reclamation plan as described in subsection (d) of this section unless new mining operations or substantial deviations to the operation are proposed after that date that require one of the plans to be amended.

#### NOTE

*Authority cited: Section 2755, Public Resources Code.  
Reference: Sections 2712(a)-(c), 2756-2757, 2770 and 2772-2773, Public Resources Code.*

#### HISTORY

1. *Renumbering and amendment of former Section 3502 to Section 3501, and new Section 3502 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Registers 82, No. 33 and 79, No. 35.*
2. *New subsections (d)-(i)(2) filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

#### § 3503. Surface Mining and Reclamation Practice.

The following are minimum acceptable practices to be followed in surface mining operations:

(a) Soil Erosion Control.

(1) The removal of vegetation and overburden, if any, in advance of surface mining shall be kept to the minimum.

(2) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion.

(3) Erosion control facilities such as retarding basins, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

(b) Water Quality and Watershed Control.

(1) Settling ponds or basins shall be constructed to prevent potential sedimentation of streams at operations where they will provide a significant benefit to water quality.

(2) Operations shall be conducted to substantially prevent siltation of ground-water recharge areas.

(c) Protection of Fish and Wildlife Habitat. All reasonable measures shall be taken to protect the habitat of fish and wildlife.

(d) Disposal of Mine Waste Rock and Overburden. Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.

(e) Erosion and Drainage. Grading and revegetation shall be designed to minimize erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent erosion of spillways when these basins have outlet to lower ground.

(f) Resoiling. When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material or weathered waste. A soil layer shall then be placed on this prepared surface. Surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

(g) Revegetation. When the reclamation plan calls for revegetation the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the mined areas shall be used.

#### NOTE

*Authority cited: Section 2755, Public Resources Code.  
Reference: Sections 2756 and 2757, Public Resources Code.*

#### HISTORY

1. *Repealer of former Section 3503, and renumbering and amendment of former Section 3504 to Section 3503 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Register 82, No. 33.*

#### § 3503.1. Reclamation Plan Elements.

#### NOTE

*Authority cited: Section 2755, Public Resources Code.  
Reference: Sections 2756, 2757, 2772 and 2773, Public Resources Code.*

#### HISTORY

1. *Repealer filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18).*

#### § 3504. Administration by Lead Agency.

(a) Record Keeping. The lead agency shall establish and maintain in-house measures and procedures to ensure organized record-keeping and monitoring of surface mining reclamation under its jurisdiction. The lead agency shall forward a copy of each permit and approved reclamation plan and financial assurance instrument to the director of the Department of Conservation.

(b) Financial Assurances. The lead agency shall ensure that the objectives of the reclamation plan will be attained. This may include provisions for surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances adopted by the board in accordance with PRC § 2773.1 (e), to guarantee the reclamation in accordance with the approved reclamation plan.

#### NOTE

*Authority cited: Section 2755, Public Resources Code.  
Reference: Sections 2757, 2758(b), 2774(a) and 2778, Public Resources Code.*

#### HISTORY

1. *Renumbering and amendment of former Section 3504 to Section 3503, and renumbering and amendment of former Section 3505 to Section 3504 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Register 82, No. 33.*
2. *Change without regulatory effect amending section filed 4-3-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 14).*

#### § 3504.5. Mine Inspections Per Calendar Year.



The purpose of this section is to clarify and make specific the scope, nature, and frequency of a surface mine inspection required under Public Resources Code Section 2774(b).

(a) Inspection of a surface mining operation shall be conducted not less than once each calendar year to determine if the operation is in compliance with the requirements of Public Resources Code Chapter 9, commencing with section 2710. The lead agency, or the board if the board is the lead agency, shall send written notice to the operator at least ten days prior to any inspection.

(b) A person, who in the determination of the lead agency has demonstrated competence in performing inspections of surface mining operations, shall perform inspections. Evaluation of geological and engineering conditions, when required, shall be performed by or under the supervision of a Geologist Registered to practice in the state under the Geologists and Geophysicists Act or a Professional Engineer registered to practice in the state under the Professional Engineers Act.

(c) A surface mine inspection shall not be performed by any person who holds a financial interest in or has been employed by the surface mining operation in any capacity, including as a consultant or as a contractor, during the year preceding the inspection.

(d) Annual surface mine inspections may be conducted by a specialist or a team of specialists with expertise that includes but is not limited to, geology, engineering, surveying, ecology, water chemistry and quality, and permitting. Persons participating in the inspection shall follow such reasonable requirements of the operator so that there is minimal interference with the surface mining operation and the inspection is conducted in a safe manner in accordance with all state and federal safety requirements.

(e) The operator shall be responsible for the reasonable cost of the annual inspection conducted by the lead agency or by the board if the board is the lead agency.

(f) Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials; photographic or other electronic images of the

operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.

(g) The inspection report to the lead agency shall consist of the inspection form MRRC-1 (4/97), developed by the department and approved by the board, and any other reports or documents prepared by the inspector or inspection team. The lead agency shall provide a copy of the completed inspection report along with the lead agency's statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection. A copy of the completed inspection report and lead agency statement of compliance shall also be provided to the mine operator within 30 days of completion of the inspection.

#### *NOTE*

*Authority cited: Section 2755, Public Resources Code.*

*Reference: Section 2774, Public Resources Code.*

#### *HISTORY*

*1. New section filed 4-7-2003; operative 5-7-2003 (Register 2003, No. 15).*

#### § 3505. Special Provisions.

##### (a) Exemptions.

(1) In addition to the provisions of Public Resources Code Section 2714(a), (c) and (d), any surface mining operation that does not involve either the removal of a total of more than 1,000 cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location, shall be exempt from the provisions of the Act.

(2) The purpose of this subdivision is to define the criteria of a "flood control facility," the clean out of which is exempt from the requirements of the Surface Mining and Reclamation Act of 1975 under PRC 2714(a) and (b). It is intended that cleaning out of a previously engineered, constructed facility for which approved design plans exist is an activity to restore the usefulness of that flood control facility to its original design purpose. It is not the intent of this subsection to exempt the removal of materials from natural channels.

The removal of post construction accumulated materials from a responsible public agency approved, managed, engineered, constructed facility intended for the purpose of water retention or detention, debris retention, or from a flood water conveyance, where the post extraction condition, capacity or grade of the facility or conveyance does not exceed the as-built approved design specification contained in the approved documents for the facility or conveyance, shall be exempt from the

provisions of the Act.

(3) The excavation, grading, or transportation of mineral materials, including overburden, exclusive of commercial surface mining activities as defined in Public Resources Code Section 2714(d), that is wholly integral and necessary to the conduct of agricultural activities either onsite or on non-contiguous parcels, shall meet the requirements of Public Resources Code Section 2714(a) for farming excavations or grading. This exemption does not apply to the exportation of mineral materials, including overburden, from the property that is in excess of 1,000 cubic yards for commercial purposes.

(b) Vested Rights. The permit and reclamation plan requirements for persons with vested rights are stated in Public Resources Code Section 2776.

Where a person with vested rights continues surface mining in the same area subsequent to January 1, 1976, he shall obtain an approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the reclamation plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2714, 2758(c) and 2776, Public Resources Code; and 78 Ops. Cal. Atty. Gen. 343 (1995).*

#### HISTORY

1. *Renumbering and amendment of former Section 3505 to Section 3504, and renumbering and amendment of former Section 3506 to Section 3505 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Register 82, No. 33.*
2. *Amendment adding new subsection (a)(1) designator, new subsection (a)(2), and amendment of Note filed 4-11-97; operative 5-11-97 (Register 97, No. 15).*
3. *Amendment of subsection (a)(2), new subsection (a)(3), and amendment of Note filed 9-18-97; operative 10-18-97 (Register 97, No. 38).*

#### **Article 2. Areas Designated to be of Regional Significance**

§ 3550. Introduction.

Pursuant to Section 2790 of the Surface Mining

and Reclamation Act, the Mining and Geology Board designates certain mineral resource sectors within the following geographical areas to be of regional significance.

#### NOTE

*Authority and reference cited: Section 2790, Public Resources Code.*

#### HISTORY

1. *New Article 2 (Sections 3550 and 3550.1) filed 10-22-81; effective thirtieth day thereafter (Register 81, No. 43).*

§ 3550.1. Tujunga and Pacoima Wash Areas of the San Fernando Valley Region, Los Angeles County.

On January 7, 1981, following a December 11,

1980, public hearing, the Mining and Geology Board designated Sectors A, B, C, and D of the Tujunga and Pacoima Wash areas to be regional significance. In general, these sectors are described as follows:

(1) Sector A – Tujunga Valley east of the Hansen Dam flood control basin, west of Interstate 210 and excluding identified archaeological sites;

(2) Sector B – the Hansen Dam rea;

(3) Sector C – an area southwest of Hansen Dam; and

(4) Sector D – Pacoima Wash north of Lopez Dam.

These sectors contain sand and gravel deposits which provide a source of construction aggregate for the region's future need. Designation Map #81-1 and a report summarizing the designation findings of the State Mining and Geology Board are on file at the Board's office in Sacramento.

#### NOTE

*Authority and reference cited: Section 2790, Public Resources Code.*

§ 3550.2. Santa Clara River Valley Area of the Western Ventura County Region, Ventura County.

On January 28, 1982, following a November 19, 1981, public hearing, the State Mining and Geology Board designated Sectors A, B, C, D, E, F, G, H, I, and J, on Designation Map #82-1, in the Santa Clara River Valley to be of regional significance. In general, these sectors are described as follows:

(1) Sector A – Instream deposits of the Santa Clara River near the community of El Rio beginning approximately one mile downstream of the U.S.

Highway 101 bridge and extending to a point approximately two miles upstream of the Los Angeles Avenue bridge.

(2) Sector B – Offstream deposits located adjacent to

Vineyard Avenue in the community of El Rio.

(3) Sector C – Offstream deposits located in and adjacent to the community of El Rio.

(4) Sector D – Offstream deposits located east of Los Angeles Avenue and south of the Santa Clara River.

(5) Sector E – Instream deposits of the Santa Clara River beginning at the eastern boundary of Sector A and extending upstream to the confluence of Santa Paula Creek.

(6) Sector F – Instream deposits extending from the eastern boundary of Sector E upstream to the confluence of Sespe Creek

(7) Sector G – Instream deposits extending from the eastern boundary of Sector F upstream to Cavin Road.

(8) Sector H – Instream deposits extending from the eastern boundary of Sector G upstream to Piru.

(9) Sector I – Instream deposits extending from the eastern boundary of Sector H upstream for approximately three miles.

(10) Sector J – Instream deposits extending from the eastern boundary of Sector I upstream to Ventura County line.

These sectors contain sand and gravel deposits that provide a source of construction aggregate for the region's future need. Designation Map #82-1 and a report summarizing the designation findings of the State Mining and Geology Board, "Designation of Regionally Significant Construction Aggregate Resource Areas in the Western Ventura County and Simi Production-Consumption Regions – March 1982" are on file at the Board's office in Sacramento.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761 – 2763 and 2790 – 2781, Public Resources Code.*

#### HISTORY

1. *New Section filed 5-6-82; effective thirtieth day thereafter (Register 82, No. 19).*

§ 3550.3. Simi Valley Area of the Simi Region, Ventura County.

On January 28, 1982, following a November 19, 1981, public hearing, the State Mining and Geology Board designated Sectors A, B, and C, on Designation Map 82-1, in the Simi Valley area to be of regional significance. In general, these sectors are described as follows:

(1) Sector A – Hillside deposits located on Oak Ridge and the Simi Hills.

(2) Sector B – Hillside deposits located along a portion of Oak Ridge extending from Long Canyon eastward to the Ventura County line.

(3) Sector C – Hillside deposits located above Meir and Runkle canyons in the Simi Hills.

These sectors contain sand and gravel deposits that provide a source of construction aggregate for the region's future needs. Designation Map #82-1 and a report summarizing the designation findings of the State Mining and Geology Board, "Designation of Regionally Significant Construction Aggregate Resource Areas in the Western Ventura County and Simi Production-Consumption regions – March 1982," are on file at the Board's office in Sacramento.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.*

#### HISTORY

1. *New section filed 5-6-82; effective thirtieth day thereafter (Register 82, No. 19).*

§ 3550.4. Santa Ana River, Santiago Creek Arroyo Trabuco, San Juan Creek, and Temescal Valley Areas of the Orange County-Temescal Valley Region, Orange, Riverside, and San Bernardino Counties.

A set of maps identifying the exact locations of the designated areas, entitled "Regionally Significant Construction Aggregate Resource Areas in the Orange County – Temescal Valley and San Gabriel Valley Production-Consumption Regions," is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas have been designated as being of regional significance:

Sector A – Instream deposits of the Santa Ana River beginning at Prado Dam and extending downstream for one-half miles.

Sector B – Instream deposits along the north side of the Santa Ana River beginning near Coal Canyon and extending downstream for approximately three miles.

Sector C – Instream deposits along the south side of the Santa Ana River from Horseshoe Bend downstream to the Weir Canyon Bridge.

Sector D – Offstream deposits located between Orangethrope Avenue and La Palma Avenue in the

northeastern part of Anaheim.

Sector E – Offstream deposits located near the intersection of Fee Ana Street and La Palma Avenue in Anaheim.

Sector F – Offstream deposits in the Warner Basin located near Jefferson Street and the Riverside Freeway in Anaheim.

Sector G – Offstream deposit located on the south side of the Santa Ana River near Lincoln Avenue in Anaheim.

Sector H – Hillside deposit located immediately east of Prado Dam in the Chino Hills.

Sector I – Hillside deposit located east of Gypsum Canyon in the Santa Ana Mountains.

Sector J – Instream deposit of Santiago Creek Beginning near Villa Park Dam and extending downstream to approximately the Newport Freeway.

Sector K – A conglomerate deposit in upper Blind Canyon east of Villa Park Dam.

Sector L – Instream deposit located on Santiago Creek between Santiago Dam and Irvine Park

Sector M – Instream deposit located under the Santiago Reservoir on Santiago Creek.

Sector N – Instream deposits of Santiago Creek beginning near Santiago Reservoir and extending upstream to the confluence of Williams Canyon, including a portion of Silverado Canyon.

Sector O – Offstream deposit located on the southeast side of Cota Street in Corona.

Sector P – Offstream deposits of Temescal Wash near the intersection of the Riverside Freeway and Interstate 15 near Corona.

Sector Q – Instream deposits located in Temescal Wash beginning near Magnolia Avenue and extending upstream to Cajalco Road.

Sector R – Instream deposits located in Temescal Wash beginning near the Olsen Canyon confluence and extending upstream to Lee Lake.

Sector S – Offstream deposits of the Coldwater Mayhew Fan near Glen Ivy Hot Springs.

Sector T – Instream deposits of San Juan Creek beginning near Casper Regional Park and extending downstream to approximately Ganado Road in San Juan Capistrano.

Sector U – Instream deposits of Arroyo Trabuco beginning one-half mile above Interstate 5 and extending approximately five miles upstream.

Sector V – Instream deposits of Arroyo Trabuco beginning at the Live Oak Canyon Road crossing

and extending upstream for approximately two miles.

#### *NOTE*

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.*

#### *HISTORY*

*1. New section filed 8-24-83; effective thirtieth day thereafter (Register 83, No. 35).*

§ 3550.5. San Gabriel River, Eaton Wash, Devils Gate, and Palos Verdes Areas of the San Gabriel Valley Region, Los Angeles County.

A set of maps identifying the exact locations of the designated areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Orange County-Temescal Valley and San Gabriel Valley Production-Consumption Regions,” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.

The construction aggregate deposits in the following areas have been designated as being of regional significance:

Sector A – Offstream and instream deposits of the San Gabriel River below Morris Dam near Azusa.

Sector B – Instream deposit consisting of the flood control channel of the San Gabriel River upstream of Foothill Boulevard near Azusa.

Sector C – Instream deposits in a portion of the Santa Fe Flood Control Basin and spillway channel near Irwindale.

Sector D – Offstream and instream deposits in the western portion of the San Gabriel River Fan near Baldwin Park and Arcadia.

Sector E – Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector F – Instream deposits of Eaton Wash located in the Eaton Wash Flood Control Basin.

Sector H – Instream deposits of Arroyo Seco in the Devils Gate Reservoir area.

Sector I – Hillside deposit in the Palos Verdes Hills on Narbonne Avenue in Bent Springs Canyon.

#### *NOTE*

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.*

#### *HISTORY*

*1. New section filed 8-24-83; effective thirtieth day thereafter (Register 83, No. 35).*

§ 3550.6. Construction Aggregate Resources, Western San Diego County Region.

A set of maps identifying the exact locations of the designated resource areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Western San Diego County Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – A granitic rock deposit located in eastern Oceanside, southwest of the intersection of Highway 78 and College Boulevard, near Buena Vista Creek Canyon.

Sector B – Channel and flood-plain deposits of the San Luis Rey River beginning near North River Road in Oceanside and extending upstream for approximately six miles.

Sector C – Channel and flood-plain deposits of the San Luis Rey River from near the Highway 78 bridge upstream to approximately the Interstate 15 bridge.

Sector D – Alluvial deposits of the upper San Luis Rey River, extending discontinuously from the Interstate 15 bridge upstream to the community of Rincon in Pauma Valley.

Sector E – A hillside alluvial fan deposit located northeast of the San Luis Rey River, extending from the community of Pala to Pauma Valley.

Sector F – An alluvial fan deposit located in upper Pauma Valley near the community of Rincon.

Sector H – A granitic rock deposit located in Twin Oaks Valley approximately three miles east of the City of Vista.

Sector I – An alluvial fan deposit extending eastward from Lake Hodges on the San Dieguito River to the upper end of the San Pasqual Valley.

Sector J – A mesa-top conglomerate deposit consisting of four areas located in or near the communities of Rancho Bernardo, Rancho Penasquitos, Poway Mira Mesa, Tierra Santa, and Santee, and on the Miramar Naval Air Station.

Sector K – A metavolcanic rock deposit located in Mission Gorge on the San Diego River.

Sector M – Channel and flood-plain deposits of the upper San Diego River from Magnolia Avenue in the City of Santee to within one mile of El Capitan

Dam.

Sector N – A channel deposit of the lower Sweetwater River located near the community of Sunnyside.

Sector O – A channel deposit of the Sweetwater River located at the upper end of Sweetwater Reservoir.

Sector P – A channel deposit of the Sweetwater River that extends from near the Singing Hills Golf Course upstream for a distance of approximately four miles.

Sector Q – A channel deposit of the Sweetwater River that extends from near the Singing Hills Golf Course upstream for a distance of approximately four miles.

Sector R – Channel and adjacent mesa deposits of the Otay River extending from near Interstate 805 upstream to approximately the head of Otay Valley.

Sector S – A metavolcanic rock deposit on Rock Mountain located on the north side of upper Otay Valley.

Sector U – Floodplain deposits of the Tijuana River extending from the international boundary downstream for a distance of approximately four miles.

Sector V – Conglomerate deposits located on the Border Highlands immediately south of the Tijuana River.

#### NOTE

*Authority cited: Section 2790, Public Resources Code.*

*Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

#### HISTORY

1. *New section filed 3-19-85; effective thirtieth day thereafter (Register 85, No. 12).*

§ 3550.7. Construction Aggregate Resources, Claremont – Upland Region.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in Claremont-Upland Production-Consumption Region,” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – The annual recharge area upstream from the San Antonio Creek Flood Control Dam.

Sector B – Eight parcels south of San Antonio Creek Flood Control Dam in the unurbanized areas of the San Antonio Creek Fan, northeast of the City of Claremont.

Sector B is roughly bounded by Foothill Boulevard on the south, San Antonio Avenue on the east, and Thompson Creek on the west.

Sector C – Four parcels in the proximal part of the

Cucamonga Creek Fan, north of the City of Upland. The area is generally north of 19<sup>th</sup> Street, west of Carmelian Avenue, east of Euclid Avenue, and south of the San Bernardino National Forest.

Sector D – Three parcels covering parts of the Day Creek and Deer Creek fans between the cities of Cucamonga and Fontana. It is bounded by the San Gabriel Mountains on the north and Highland Avenue on the south.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.*

#### HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).*

*\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.8. Constructive Aggregate Resources, San Bernardino Region.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in San Bernardino Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Eighteen parcels on the Lytle Creek Fan in and around the City of Fontana. The larger parcels of this sector are north of Fontana; several smaller parcels are scattered to the east and south of Fontana to the Santa Ana River.

Sector B - Thirteen parcels covering the unurbanized portions of Lytle Creek Wash from north of Freeway 15, west to the downtown area of the City of San Bernardino.

Sector C – Eight parcels along the Cajon Creek Wash from the bend in the wash south of Lost Lake, southward to the confluence of Cajon Creek and Lytle Creek.

Sector D – Five parcels in a generally oval-shaped area southeast of the City of Ontario. The area is generally bounded by Freeway 10 on the south, Marlay Avenue on the north, Haven Avenue on the

west, and Etiwanda Avenue on the east.

Sector E – Fourteen parcels in and along the Santa Ana River from Freeway 395, south and west to the town of Rubidoux. Sector F – Seventeen parcels along the upper Santa Ana River and Santa Ana Wash and areas along smaller drainages merging with the Santa Ana Wash, including Warm Creek, City Creek, and Mill Creek.

Sector G – Two parcels covering parts of the San Gorgonio River alluvial fan, east of the City of Banning.

Sector G extends from the mouth of Banning Canyon, southeastward to the community of Cabazon.

Sector H – The alluviated area of the Rice Canyon drainage, about one mile south of Alberhill.

Sector I – The alluvial deposits in the lower part of Mc Vickers Canyon and the alluvial fan near the mouth of McVickers Canyon. Sector I is a few miles northeast of Lake Elsinore.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790 – 92, Public Resources Code.*

#### HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).*

*\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.9. Construction Aggregate Resources, Saugus-Newhall and Palmdale Regions.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in Saugus – Newhall and Palmdale Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Portions of the Santa Clara River and its immediate floodplain extending from the Los Angeles County Line to Bee Canyon, parts of Castiac Creek, and Oak Spring Canyon.

Sector B – An area bounded by Bee Canyon on the northwest, the Santa Clara River to the south, and extending approximately one mile east of the Agua Dulce Canyon; and a triangle-shaped area with a boundary extending from the mouth of Pole Canyon west along an old railroad grade, south to Oak Spring Canyon then northeast back to the mouth of Pole

Canyon.

Sector C – A triangular area beginning at the mouth of Pole Canyon, running southeast along the canyon to Oak Spring Canyon then southwest to Coyote Canyon, turning northeast to close the triangle back at the mouth of Pole Canyon.

Sector D – An area north of the California Aqueduct whose eastern boundary is along Little Rock Wash then turns west approximately one mile north of Boundary Avenue. The western boundary runs south near 47<sup>th</sup> Street and Fort-Tejon Road.

Sector E – An area of the Big Rock Wash bounded by the aqueduct on the south, North 165<sup>th</sup> Street on the east, Palmdale Boulevard on the north, and 116<sup>th</sup> Street on the west.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.*

#### HISTORY

*1. New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).*

*\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.10. Construction Aggregate Resources, South San Francisco Bay Region.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in South San Francisco Bay Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.

Sector A – Aggregate deposit located in Amador Valley and Livermore Valley areas in the cities of Pleasanton and Livermore in Alameda County.

Sector B – Alluvial deposit consisting of six parcels along Arroyo del Valle on the southwestern edge of Livermore in Alameda County.

Sector C – Alluvial deposit consisting of six parcels located along Arroyo Mucho on the eastern edge of Livermore in Alameda County.

Sector D – Greenstone deposit located on Apperson Ridge east of Sunol Valley in Alameda County.

Sector E – Alluvial deposit consisting of five parcels in Sunol Valley in southern Alameda County.

Sector H – Elongated sandstone deposit located on the foothills of the cities of Fremont and Union City.

Sector I – Elongated series of parcels consisting of a sandstone deposit along the foothills east of the cities of Fremont and Milpitas.

Sector J – Alluvial deposit located near Mowry Landing on the southern edge of Fremont in Alameda County.

Sector K – Alluvial deposit located west of Highway 17 on the southern edge of Fremont in Alameda County.

Sector L – Alluvial deposit consisting of three parcels located between the Nimitz Freeway, Alameda Creek, the Coyote Hills, and Jarvis Avenue in the northwestern portion of the City of Fremont in Alameda County.

Sector M – Located at the southern end of the Coyote Hills on the west side of Fremont in Alameda County.

Sector N – Greenstone deposit in the foothills east of the City of Hayward in Alameda County.

Sector O – Consists of greenstone and rhyolite located in the Berkeley Hills west of Lake Chabot in Alameda County.

Sector P – Consists of rhyolite located north of the oak Knoll Naval Hospital in the Berkeley Hills.

Sector S – Mount Zion and a smaller adjacent hill in central Contra Costa County.

Sector T – Consists of basalt and andesite located at the south end of Gudde Ridge in the City of Moraga in southwestern Contra Costa County.

Sector U – Consists of basalt and andesite located on a small ridge southwest of the City of Orinda in Contra Costa County.

Sector V – Consists of basalt and andesite located on a small ridge southwest of the city of Orinda in Contra Costa County.

Sector W – Sandstone and shale deposit consisting of three parcels located on the west side of the City of Richmond in Contra Costa County.

Sector X – The Guadalupe Quarry property on the north side of Mount San Bruno adjacent to the City of Brisbane in San Mateo County.

Sector Y – Limestone and greenstone deposits located west of Pacifica near Rockway Beach in northern San Mateo County.

Sector Z – Greenstone deposit located in the Los Altos Hills in northwestern Santa Clara County.

Sector BB – Limestone deposit located west of the City of Cupertino on upper Permanente Creek in Santa Clara County.

Sector CC – Greenstone deposit located northwest of Stevens Creek Reservoir on the western edge of the City of Cupertino in Santa Clara County

Sector DD – Conglomerate deposit located northwest of Stevens Creek Reservoir west of the City of Cupertino in Santa Clara County.

Sector EE – Located immediately northwest of the intersection of Capitol Expressway and Monterey Road (Highway 82) on the City of San Jose in Santa Clara County.

Sector GG – Sandstone deposit located approximately four miles south of Brentwood in eastern Contra Costa County.

Sector HH – Granitic rock deposit located northwest of the City of Half Moon Bay in western San Mateo.

Sector II – Sandstone and siltstone deposit located in Limekiln Canyon east of Lexington Reservoir in southwestern Santa Clara County.

Sector LL – Sandstone deposit located in the foothills east of the City of Fremont in Alameda County.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761 – 63 and 2790-92, Public Resources Code.*

#### HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).*

*\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.11. Construction Aggregate Resources, North San Francisco Bay Region.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in North San Francisco Bay Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Channel and floodplain alluvium deposits located in Alexander Valley of Sonoma County; extends from approximately the City of Cloverdale downstream to a point 3.25 miles southeast of the community of Jintown.

Sector B – Alluvial deposits of the middle reach of the Russian River and a small portion of Dry Creek

0.5 miles west of Healdsburg. The sector extends from the City of Healdsburg down the Russian River to a point near the Wohler Road Bridge.

Sector C – Alluvial deposits restricted to two small portions of Sonoma Creek. The first is about one mile south of Sonoma State Hospital, and the second is about one mile south of Boyes Hot Springs.

Sector D – Consists of Novato Conglomerate deposits located near Black Point in eastern Marin County.

Sector E – A small basalt deposit located on Petaluma Hill near the southeastern edge of the City of Petaluma in Sonoma County.

Sector F – A small aggregate deposit located west of the City of Cotati on Stony Point Road in Sonoma County.

Sector G – Three contiguous parcels consisting of metamorphosed graywacke and greenstone deposits located east of the City of Vallejo at the southern end of Sulphur Springs Mountain.

Sector H – Aggregate deposit located southeast of the City of Napa in Napa County.

Sector I – Metamorphosed sandstone deposit located on Point San Pedro in eastern Marin County.

Sector J – A large block of andesite located on Burdell Mountain approximately two miles north of the City of Novato in Marin County.

Sector K – Two areas east of Dunbar Union School and northeast of the community of Glen Ellen in Sonoma County.

Sector L – Small greenstone and pillow lavas deposits located in Millerton Gulch approximately 3.5 miles north of the community of Point Reyes Station in Marin County.

Sector M – A small serpentine deposit located in upper Bowman Canyon on Burdell Mountain approximately three miles northwest of Novato in Marin County.

Sector N – A small siltstone deposit located approximately one mile west of the community of Forestville and south of Highway 116.

Sector O – A small siltstone located approximately one mile west of the community of Forestville and north of Highway 116.

Sector P – Located along the west side of Green Valley approximately three miles southwest of Forestville in Sonoma County.

Sector Q – Sandstone deposit located in Cheney Gulch approximately 2.5 miles east of Bodega Bay in western Sonoma County.

Sector R – Located approximately 2.5 miles southeast of the City of Petaluma in Sonoma County.

Sector S – Located approximately five miles west of



Petaluma on Petaluma Creek Road in Sonoma County.

Sector T – Sandstone deposits located 1.5 miles north of Duncan Mills on Austin Creek in western Sonoma County.

Sector U – Located at the confluence of the South Fork and Wheatfield Fork of the Gualala River in northwestern Sonoma County.

Sector V – Consists of andesite located on Burdell Mountain approximately two miles north of the City of Novato in Marin County.

Sector W – Located on Porter Creek Road approximately four miles east of the community of Mark West Springs in eastern Sonoma County.

Sector X – Consists of sandstone and andesite located along Highway 121 approximately 2.5 miles north of Sears Point in southeastern Sonoma County.

Sector Y – Shale deposit located approximately 2.5 miles west of Healdsburg in Sonoma County.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.*

#### HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).*

*\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.12. Construction Aggregate Resources, Monterey Bay Region.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in Monterey Bay Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Consists of quartz diorite located on Ben Lomond Mountain southwest of Felton in Santa Cruz County.

Sector B – Consists of sandstone deposit divided into three large non-contiguous parcels located east of Felton in Santa Cruz County.

Sector C – Sandstone deposit located near Wilder

Ranch west of the City of Santa Cruz.

Sector D – Alluvial deposit located in a portion of Uvas Creek located west of Gilroy in southern Santa Clara County.

Sector E – Channel and floodplain deposits located in a long portion of the San Benito County.

Sector F – Two elongated deposits located near the community of Aromas in western San Benito County, extending from State Highway 101 northwesterly to Pajaro Gap on Highway 129, a distance of approximately five miles.

Sector G – The Natividad Quarry located northeast of Salinas in Monterey County.

Sector H – Sand deposits in two separate but adjacent parcels located along the southern portion of Monterey Bay, north of the City of Marina.

Sector I – A large sand dune area located on the northern edge of the City of Marina in Monterey County.

Sector J – Quartz diorite located on Huckleberry Hill on the east side of the community of Pebble Beach in Monterey County.

Sector K – Stream channel and floodplain deposits consisting of a one mile long portion of the lower Carmel River in the Carmel Valley of Monterey County.

Sector L – Consists of quartz diorite and siltstone located on upper Soquel Creek on the east side of Sugarloaf Mountain in Santa Cruz County.

Sector M – Fluvial sand and gravel deposit located on Freedom Boulevard approximately seven miles northwest of Watsonville in southern Santa Cruz County.

Sector N – Located at the confluence of Chalone Creek with the Salinas River in southern Monterey County, approximately three miles southwest of the community of Greenfield, northeast of the Southern Pacific Railroad tracks.

Sector O – Located at the confluence of Chalone Creek with the Salinas River in southern Monterey County, approximately three miles southwest of the community of Greenfield.

Sector P – Stream channel and floodplain deposits of San Lorenzo Creek located in the foothills of the Gabilan Range in southern Monterey County, approximately six miles northwest of King City.

Sector U – Stream channel and floodplain deposits of Upper Pacheco Creek located near Bells Station in southeastern Santa Clara County.

#### NOTE

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public*

*Resources Code.*

#### **HISTORY**

*1. New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).*

*\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.13. Construction Aggregate Resources, Fresno Production-Consumption Region.

A set of maps identifying the exact locations of the designated resource areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Fresno Production-Consumption Region,” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector K – Alluvial deposits of the Kings River between Avocado Lake on the northeast and the Southern Pacific Railroad tracks on the southwest.

Sector S – Portions of the San Joaquin River floodplain between Friant Dam and Highway 99.

#### **NOTE**

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.*

#### **HISTORY**

*1. New section filed 9-16-88; operative 10-16-88 (Register 88, No. 39).*

*2. Amendment of first paragraph filed 9-5-2000; operative 10-5-2000 (Register 2000, No. 36).*

§ 3550.14. Construction Aggregate Resources, Stockton-Lodi Production-Consumption Region.

A map identifying the exact locations of the designated resource areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Stockton-Lodi Production-Consumption Region, 1989,” is incorporated by reference into this regulation. This map is available from the State Mining and Geology Board’s office in Sacramento. The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Aggregate deposits on the alluvial fan created by Corral Hollow Creek, situated south of

the City of Tracy.

Sector B – Aggregate deposit on the alluvial fan created by Lone Tree Creek. Deposit extends from just west of Interstate 580 near the base of the Coast Range hills northwest to the alignment of Interstate 5.

Sector C – Aggregate deposit that consists of the alluvial fan formed by Hospital Creek. Deposit extends from west of Interstate 580 within the foothills of the Coast Range and east into the San Joaquin Valley.

Sector D – Sand deposit centered on the San Joaquin River near the intersection of Highway 120 and Interstate 5 west of the City of Manteca.

#### **NOTE**

*Authority cited: Section 2790, Public Resources Code. Reference: Sections 2762, 2761-63 and 2790-92, Public Resources Code.*

#### **HISTORY**

*1. New section filed 6-29-89; operative 7-29-89 (Register 89, No. 27).*

§ 3550.15. Construction Aggregate Resources, Palm Springs Production-Consumption Region.

Two maps identifying the exact locations of the designated resource areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Palm Springs Production-Consumption Region, 1989 (Designation Map no. 89-2, Plates 1 and 2),” are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.

The aggregate deposits in the following areas are designated as being of regional significance:

Sector A-1 – Aggregate deposits located adjacent to the southeast border of the community of Cabezon at the base of the San Jacinto Mountains.

Sector A-2 – Aggregate deposits located between the Colorado River Aqueduct and the Morongo Indian Reservation.

Sector A-3 – Aggregate deposits located directly south of Interstate 10 two miles east of the community of Cabazon.

Sector B-1 – Aggregate deposit located at the mouth of the Whitewater Canyon north of Interstate 10.

Sector B-2 – Aggregate deposit located immediately south of Interstate 10 at the intersection of Highway 62.

Sector B-3 – Aggregate deposit located immediately south of Sector B-2 and east of the San Geronio Pass to Garnet Hill.

Sector B-4 – Aggregate deposit located east of Indian Avenue and south of Garnet Hill.

Sector B-5 – Aggregate deposit located adjacent to the northern border of Sector B-3 and the southern border of Interstate 10 near Garnet Hill.

Sector C – Aggregate deposit located in the Little Morongo Canyon approximately one mile north of the City of Dessert Hot Springs.

Sector D – Aggregate deposit located in a small unnamed wash in the foothills of the community of Thousand Palms.

Sector E-1 – Aggregate deposit located northeast of Dillon Road, approximately six miles northeast of the City of Indio.

Sector E-2 – Aggregate deposit located approximately six miles northeast of the City of Indio.

Sector F – Aggregate deposit located approximately four miles northeast of the City of Indio.

Sector G – Aggregate deposit located approximately three miles north of the City of Indio.

Sector H-1 – Aggregate deposit located approximately four miles east of the community of Thermal.

Sector H-2 – Aggregate deposit located northeast of the Coachella Canal approximately three and a half miles east of the community of Thermal.

Sector H-3 – Aggregate deposit located southwest of the Coachella Canal approximately three miles east of the community of Thermal.

#### **NOTE**

*Authority cited: Section 2790, Public Resources. Reference: Sections 2762, 2761-63 and 2790-92, Public Resources Code; and Ops. Cal. Atty. Gen. 343 (1995).*

#### **HISTORY**

1. *New section filed 11-13-89; operative 12-13-89 (Register 89, No. 46).*

### **Article 4. Designation Appeal Procedures**

#### **§ 3625. Purpose of Regulations.**

The regulations contained in this article govern procedures affecting appeals to the board on the approval or denial of a permit to conduct surface mining operations by a city or county, hereinafter referred to as the “lead agency,” in an area designated as containing mineral deposits of statewide or regional significance pursuant to the provisions of Section 2775, Public Resources Code (PRC 2775).

#### **NOTE**

*Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### **§ 3626. Filing of Intent to Appeal.**

(a) Any person filing an appeal to the Board pursuant to PRC 2775 shall, within 15 days of exhausting his or her rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information. Failure to submit all the required, completed documents to the Board within the 15 days filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

(1) A map indicating the exact location of the disputed area, including township and range, and corresponding to the designation map prepared for the region;

(2) Written statements with supporting documentation indicating the basis for the appellant’s challenge to the decision by the lead agency either to approve or deny a permit to mine in an area designated as being of statewide or regional significance.

(3) Copy of notice to the lead agency that the appellant has filed an intent to appeal to the Board.

#### **NOTE**

*Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### **HISTORY**

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30)*
2. *Amendment of subsection (a) filed 9-19-2002; operative 10-19-2002 (Register 2002, No. 38).*

#### **§ 3627. Determination of Jurisdiction.**

The Chairman of the Mining and Geology Board, or the Chairman’s designee, based upon the information submitted pursuant Section 3626 of this article, shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant’s challenge raises substantial issues with respect to the action taken to approve or deny the permit to conduct surface mining operations by the lead agency. The Chairman of the Board, or the Chairman’s designee, shall make such determination within 15 days of receipt of the information required by Section 3626 of this article, and shall notify the appellant and the lead agency of the determination by certified mail.

If the Chairman finds, based upon the criteria stated

in (a), (b) or (c) below, that the appeal raises no substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations in a designated area, he or she shall refuse to grant a hearing on an appeal. In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of the Public Resources Code and the rules of the Board; and

(b) Whether the appeal specifically relates to the approval or denial of a permit to conduct surface mining operations in an area designated by the Board as being of statewide or regional significance.

(c) Whether the appeal is that of a lead agency's reconsideration of an appeal previously remanded by the board to that lead agency, and the appellant's challenge raises no new substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations

#### NOTE

*Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### HISTORY

1. New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30)
2. Amendment filed 9-19-2002; operative 10-19-2002 (Register 2002, No. 38).

#### § 3628. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the board within 30 days of receipt of notification three certified copies for the complete administrative record, which shall include, but not be limited to, all of the following information.

(1) Project application and complete, detailed description of the proposed project, including conditions added for mitigation of environmental impacts;

(2) Location and site description maps submitted to the lead agency as part of the application process;

(3) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the project; and

(4) Written transcripts of all public hearings related to the decision of the lead agency.

(b) In cases where the appellant is faced with substantial delay in gathering the administrative record due to internal procedures of the lead agency, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(c) Failure to produce the administrative record upon request of the Board within 30 days shall be deemed grounds to remand the appeal to the lead agency for reconsideration.

#### NOTE

*Authority cited: Section 2772, 2773, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### HISTORY

1. New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).
2. Amendment filed 9-19-2002; operative 10-19-2002 (Register 2002, No. 38).

#### § 3629. Hearing Procedures-Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 30 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. In no case shall the hearing be scheduled beyond 180 days of the receipt of the complete administrative record without the concurrence of the Board, the appellant, and the project proponent (when not the same person as the appellant). The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

#### NOTE

*Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### HISTORY

1. New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).

#### § 3630. Hearing Procedures-Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two members to be appointed for that hearing by the Chairman of the Board. The

Chairman of the Board or the Chairman's designee shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3634 of these regulations.

*NOTE*

*Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

*HISTORY*

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3631. Hearing Procedures-Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency, the appellant, and the project proponent (when not the same person as the appellant);

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily posted in the city or county jurisdiction within which the proposed surface mining operations are to take place.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Identification of the proposed surface mining operation, a brief description of the location of the operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to approve or deny the project and has requested the Board hear the appeal;

(4) A statement inviting the appellant, the lead agency, the project proponent (when not the same person as the appellant), and the public to make statements at the hearing regarding the decision of the lead agency; and

(5) The time, date, and location of the public hearing.

*NOTE*

*Authority cited: Section 2775, Public Resources Code.*

*Reference: Section 2775, Public Resources Code.*

*HISTORY*

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3632. Hearing Procedures-Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3626 and 3628 of this article.

*NOTE*

*Authority cited: Section 2755, Public Resources Code.*

*Reference: Sections 2755, Public Resources Code.*

*HISTORY*

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3633. Hearing Procedures-Sequence.

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the project proponent (when not the same person as the appellant);

(5) Statements on behalf of the public;

(6) Rebuttal on behalf of the appellant; and

(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded either electronically or by other convenient means.

*NOTE*

*Authority cited: Section 2755, Public Resources Code.*

*Reference: Sections 2755, Public Resources Code.*

*HISTORY*

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3634. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, upon the record before it, the lead agency decision was made based on substantial evidence

in light of the whole record. Notification of the Board's determination shall be made by certified mail to the appellant, the lead agency, and the project proponent (when not the same person as the appellant) within 15 days following the regular business meeting of the Board at which the decision is made.

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2755, Public Resources Code.*

**HISTORY**

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

## **Article 5. Reclamation Plan Appeals**

### **§ 3650. Filing of Intent to Appeal.**

Any person filing an appeal to the Board pursuant to PRC 2770 shall, within 15 days of exhausting his or her rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information. Failure to submit all the required, completed documents to the board within the 15 days filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

(a) A map indicating the exact location of the surface mining operation, including township and range.

(b) A copy of all documents which together were proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770.

(c) Written statements with supporting documentation indicating the basis for the appellant's challenge of:

(1) the lead agency's action to deny approval of the reclamation plan submitted pursuant to PRC 2770; or

(2) the lead agency's failure to act according to due process; or

(3) the lead agency's failure to act within a reasonable period of time of submittal of a completed application.

(A) failure to act means a lead agency's inaction in processing the reclamation plan through its successive steps as provided for in the lead agency's surface mining and reclamation ordinance adopted pursuant to PRC Section 2774, and as

provided for in PRC Section 2774(c).

(B) Reasonable time means the time period specified in the lead agency's surface mining and reclamation ordinance, or that which is mutually agreed upon by the applicant and the lead agency. Where no times are specified in the lead agency's ordinance, then the interval between successive review steps shall not exceed 60 days.

(d) Copy of notice to the lead agency that the appellant intends to file an appeal to the Board.

**NOTE**

*Authority cited: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.*

**HISTORY**

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Amendment of first paragraph and new subsections (c)(3)(A)-(B) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

### **§ 3651. Determination of Jurisdiction.**

The Chairman of the Mining and Geology Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues related to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770. If the Chairman finds, based upon the criteria stated in (a) plus (b) below, that the appeal raises no substantial issues with respect to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770, he or she shall refuse to grant a hearing on the appeal. In making these determinations, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which can legally be addressed by the Board within the limits of PRC 2770(e) and the rules of the Board; and

(b) Whether the appeal specifically relates to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770.

**NOTE**

*Authority cited: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.*

**HISTORY**

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No.2)*

2. *Change without regulatory effect amending first paragraph and subsection (a) filed 5-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 18).*
3. *Change without regulatory effect amending first paragraph and subsection (b) filed 8-9-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 32).*

§ 3652. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the Board within 30 days of receipt of notification three certified copies of the complete administrative record, which shall include, but not be limited to, all of the following information:

(1) All documents which together are proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770;

(2) Location and site description maps submitted to the lead agency as part of the reclamation plan application;

(3) Environmental documentation prepared pursuant to the provisions of the California Environmental Quality Act (CEQA), PRC Sections 21000 et seq., including conditions added for mitigation of environmental impacts, if any;

(4) A copy of the lead agency surface mining and reclamation ordinance under which the reclamation plan may have been judged pursuant to PRC 2770;

(5) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the proposed reclamation plan; and

(6) Written transcripts of all public hearings related to the lead agency review for approval of the reclamation plan pursuant to PRC Section 2770.

(b) Should the lead agency choose not to complete an environmental review of the project pursuant to the provisions of CEQA, or should the Board deem such review inadequate under the provisions of CEQA, the record will not be considered complete until an adequate CEQA review is completed.

(1) In those instances in which the Board is the CEQA lead agency, the Board shall be responsible

for the preparation of new or supplemental environmental documents.

(2) Pursuant to PRC Section 15045, the project proponent shall bear any costs relating to preparation and completion of any required environmental documents.

(c) Failure of the appellant to request in writing the administrative record from the lead agency within 10 days of receiving notification of the Board's acceptance of the appeal may be deemed grounds for dismissal of the appeal.

(d) If the appellant is unable to obtain the administrative record from the lead agency within 15 days, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(e) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days shall be deemed grounds for Board action based on information provided solely by the appellant.

(f) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 10 days may be deemed grounds for dismissal of the appeal.

*NOTE*

*Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 21000 et seq., Public Resources Code; and Section 15000 et seq., California Code of Regulations.*

*HISTORY*

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Amendment filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3653. Technical Review for Adequacy of Reclamation Plan.

(a) The Board may consult with the technical staff of the Department of Conservation for determination of the adequacy or reclamation plans prepared for surface mining operations that are appealed to the Board. Preliminary determination of technical adequacy shall be based on, but shall not be limited to, the following:

(1) Substantial compliance with the requirements of PRC Sections 2772 and 2773;

(2) Substantial compliance with the requirements of Board rules and regulations (14 CCR Sections 3500 et

seq. and Sections 3700 et seq.);

(3) Substantial compliance with the reclamation provisions of the lead agency surface mining and reclamation ordinance as certified by the Board pursuant to the provisions of PRC 2774; and

(4) Whether the proposed reclamation plan is technically feasible given the scope of the mining operations.

(b) The determination of whether substantial compliance with PRC Sections 2772 and 2773, 14 CCR Sections 3500 et seq. and Sections 3700 et seq., and the Board-certified lead agency surface mining and reclamation ordinance have been met shall be based on whether all elements of these provisions that are necessary to ensure viable, planned reclamation of a particular site are included and are technically feasible so as to satisfy the objectives of the Surface Mining and Reclamation Act. For example, a description of revegetation efforts might not be necessary for a pit to be used as a landfill, just as a description of final slope angles may not be necessary for a gravel bar skimming operation. In other sites, however, such information may be critical. In all cases, a site visit by the technical staff of the Department of Conservation shall be made before substantial compliance is determined.

#### NOTE

*Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.*

#### HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Change without regulatory effect amending subsections (a), (a)(2) and (b) filed 5-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 18).*
3. *Amendment of subsections (a), (a)(2) and (b) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

#### § 3654. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of

the Board. The Board shall endeavor to schedule such public hearings in the jurisdiction from which the appeal originated, but may otherwise schedule such appeals to be heard in Sacramento.

#### NOTE

*Authority cited: Section 2770, Public Resources Code.*

*Reference: Sections 2770(c)-(e), Public Resources Code.*

#### HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*

#### § 3655. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two members of the Board to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3659 of these regulations.

#### NOTE

*Authority cited: Section 2770, Public Resources Code.*

*Reference: Sections 2770(c)-(e), Public Resources Code.*

#### HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, NO. 2).*
2. *Amendment filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

#### § 3656. Hearing Procedures - Notice.

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency and to the appellant;
- (2) Mailing the notice to any person who requests notice of the appeal or hearing;
- (3) Mailing the notice to the Board's regular mailing list; and
- (4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) The name of the appellant;
- (2) Identification of the proposed reclamation plan, a brief description of the location of the surface mining operation for which the reclamation plan was prepared by reference to any commonly known landmarks in the area, and a simple location map indicating the general



location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to deny approval of the reclamation plan, or that the lead agency is being challenged based on failure to act according to due process, or that the lead agency is being challenged based on failure to act within a reasonable period of time;

(4) A statement explaining that the Board may approve or deny approval of the reclamation plan, and that if the reclamation plan is denied approval, it shall be returned to the operator who then must revise it and resubmit the revised plan to the lead agency within 30 days of receipt from the Board;

(5) A statement inviting the appellant, the lead agency, and the public to make statements at the hearing regarding the action (or inaction) of the lead agency; and

(6) The time, date, and location of the public hearing.

#### NOTE

*Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.*

#### HISTORY

1. New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).
2. Amendment of subsection (a) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).

#### § 3657. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3650 and 3652 of this article, together with any findings from the technical review pursuant to Section 3653 of this article, and any CEQA documents prepared pursuant to Section 3652 of this article.

#### NOTE

*Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.*

#### HISTORY

1. New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).

#### § 3658. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;

- (2) Statements on behalf of the appellant;

- (3) Statements on behalf of the lead agency;

- (4) Statements on behalf of the public;

- (5) Rebuttal on behalf of the appellant; and

- (6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded.

#### NOTE

*Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.*

#### HISTORY

1. New section file 1-3-89; operative 2-2-89 (Register 89, No. 2).
2. Amendment of subsection (c) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).

#### § 3659. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed reclamation plan substantially meets the requirements of PRC 2772 and 2773 and the lead agency surface mining and reclamation ordinance, and the provisions of Section 3654 of this article. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision is made. In cases where the reclamation plan is not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision, and the operator shall be put on notice that deficiencies must be corrected and a revised reclamation plan filed with the lead agency within 30 days.

#### NOTE

*Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), 2772, 2773 and 2774, Public Resources Code.*

#### HISTORY

1. New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).

## **Article 6. Mineral Resource Management Policies**

§ 3675. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

**Compatible Land Use.** Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

**Incompatible Land Use.** Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

### **NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2761-2762, Public Resources Code.*

### **HISTORY**

1. New section filed 10-12-88; operative 11-11-88 (Register 88, No. 42).

§ 3676. Mineral Resource Management Policies.

Lead agency mineral resource management policies adopted pursuant to the provisions of PRC Section 2762 shall include but not be limited to, the following:

(a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of the identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the Board.

(b) Statements of policy in accordance with the provisions of PRC Section 2762(a).

(c) Implementation measures that shall include:

- (1) Reference in the general plan of the location

of identified mineral deposits, and a discussion of those areas targeted for conservation and possible future extraction by the lead agency.

(2) Use of overlay maps or inclusion of information on any appropriate planning maps to clearly delineate identified mineral deposits and those areas targeted by the lead agency for conservation and possible future extraction.

(3) At least one of the following:

(A) Use of special purpose overlay zones, mineral resource/open space zoning, or any other appropriate zoning that identifies the presence of identified mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.

(B) Record, on property titles in the affected mineral resource areas, a notice identifying the presence of identified mineral deposits.

(C) Impose conditions upon incompatible land uses in and surrounding areas containing identified mineral deposits for the purpose of mitigating the significant land use conflicts prior to approving a use that would otherwise be incompatible with mineral extraction.

### **NOTE**

*Authority cited: Section 2755, Public Resources Code.*

*Reference: Sections 2757 and 2761-63, Public Resources Code.*

### **HISTORY**

1. New section filed 10-12-88; operative 11-11-88 (Register 88, No. 42).

## **Article 7. Financial Assurances Appeal Procedures**

§ 3680. Purpose of Regulations.

The regulations contained in this article govern procedures for appeals to the State Mining and Geology Board ("the Board") concerning financial assurances for reclamation of existing surface mining operations under section 2770 of the Public Resources Code.

### **NOTE**

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **HISTORY**

1. New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 9).

§ 3681. Filing of Intent to Appeal.

Any person filing an appeal to the Board pursuant to

section 2770 of the Public Resources Code concerning financial assurances for reclamation shall, within 15 days of exhausting his or her right to appeal in accordance with the procedures of the lead agency, file a notice of intent to appeal by submitting the following information:

(1) A map indicating the exact location of the surface mining operation, including township and range.

(2) A copy of all documents which together comprise the financial assurances for reclamation which are the subject of the appeal.

(3) Written statements, with supporting documentation, indicating the basis for the appellant's challenge of the action or inaction by the lead agency concerning financial assurances for reclamation.

(4) Copy of the notice to the lead agency that the appellant intends to file an appeal with the Board.

#### NOTE

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

#### HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 9).*

#### § 3682. Determination of Jurisdiction.

The Chairman of the Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises any substantial issues related to the review by the lead agency of financial assurances for reclamation for existing surface mining operations pursuant to Public Resources Code section 2770. If the Chairman finds, based on the criteria stated in (a) through (c) below, that the appeal raises no substantial issues with respect to the review by the lead agency of financial assurances for existing surface mining operations under Public Resources Code section 2770, he or she shall refuse to grant a hearing on the appeal. In making this determination, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of Public Resources Code section 2770 and

the rules of the Board;

(b) Whether the appeal specifically relates to the lead agency's review of financial assurances submitted for existing surface mining operations pursuant to the provisions of Public Resources Code section 2770; and

(c) Whether the appellant exhausted his or her appeal remedies before the lead agency.

#### NOTE

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

#### HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 9).*

#### § 3683. Limit on Number of Filings of Appeal.

Upon a finding by the Chairman, or the Chairman's designee (Board Member), that the appeal is not within the jurisdiction of the Board, the appellant may refile the notice of intent to appeal, once only, with the identified information needed to complete the appeal, within 21 days of receipt of the letter of denial of the original notice of intent to appeal.

#### NOTE

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

#### HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

#### § 3684. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit three certified copies of the complete administrative record, which shall include, but shall not be limited to, all of the following information:

(1) A copy of the approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurances for reclamation are proposed;

(2) A copy of the documents comprising the financial assurances or the proposed financial assurances for reclamation which were submitted to the lead agency for review and approval pursuant to Public Resources

Code section 2770;

(3) Location and site description maps submitted to the lead agency as part of the reclamation plan;

(4) A detailed estimate of the cost of the reclamation, in accordance with the approved reclamation plan, of the lands remaining disturbed and/or to be disturbed by the surface mining operation in the applicable twelve (12) month period, together with a map clearly delineating the boundaries of those lands;

(5) All reports, findings, communications, correspondence and statements in the file of the lead agency relating to the financial assurances in question;

(6) Written transcripts of all public hearings related to the lead agency's review of the financial assurances.

(b) Failure of the appellant to request the administrative record from the lead agency within 21 days of receiving the notice stating the Board's acceptance of the appeal, may be deemed grounds for dismissal of the appeal.

(c) If the appellant is unable to obtain the administrative record from the lead agency within 10 working days after submission of the request for the record, the appellant shall so notify the Board in writing. The Board may then require the lead agency to immediately submit three certified copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(d) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days may be deemed grounds for Board action based on information provided solely by the appellant.

(e) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 21 days may be deemed grounds for dismissal of the appeal.

**NOTE**

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

**HISTORY**

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

**§ 3685. Hearing Procedures - Scheduling.**

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant.

The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

**NOTE**

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

**HISTORY**

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

**§ 3686. Hearing Procedures - Authority for Delegation.**

The Board may delegate conduct of the hearing to a committee of at least two Board members to be appointed for that hearing by the Chairman of the Board.

The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3690 of these regulations.

**NOTE**

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

**HISTORY**

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

**§ 3687. Hearing Procedures - Notice.**

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency and to the appellant;

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) The name of the appellant;
- (2) Description of the financial assurances for reclamation, identification of the surface mining operation for which the financial assurances for reclamation were provided, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
- (3) A statement of the grounds for the appeal;
- (4) A statement that the Board may approve or deny approval of the financial assurances for reclamation;
- (5) A statement that if the Board denies approval of the financial assurances, they shall be returned to the mine operator who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances to the lead agency for review and approval;
- (6) A statement inviting the appellant, the lead agency, and the public to provide testimony and evidence at the hearing regarding the action or inaction of the lead agency; and
- (7) The time, date, and location of the public hearing.

*NOTE*

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

*HISTORY*

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3688. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to sections 3681 and 3684 of this article.

*NOTE*

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.*

*HISTORY*

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3689. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the appellant;
- (3) Statements on behalf of the lead agency;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the appellant; and
- (6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Written statements shall be submitted to the Board at least ten days prior to the hearing.

(d) The public hearing shall be recorded.

*NOTE*

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

*HISTORY*

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3690. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed or existing financial assurances for reclamation substantially meet the applicable requirements of Public Resources Code sections 2770, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. Financial assurances determined to meet these requirements shall be approved. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision was made. In cases where the financial assurances for reclamation are not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision. The appellant shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances for reclamation to the lead agency for review and approval.

#### NOTE

*Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.*

#### HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

### Article 8. Fee Schedule

#### § 3695. Definitions.

The following definitions shall govern the interpretation of these regulations:

"Produced Minerals" means minerals extracted at the site of the mining operation, and either:

(a) sold, given or otherwise moved off the site of the operation, as defined in the approved reclamation plan, or;

(b) used onsite for production of completed products (e.g. cement, bricks, asphaltic concrete, etc.).

Stockpiles of mineral products that remain on the site, as defined in the lead agency approved reclamation plan, are not produced minerals for purposes of these regulations.

"Primary Mineral Commodity Produced" means the produced mineral that provides the highest dollar values sales for the operation.

"Board" means State Mining and Geology Board.

As used in Section 3697 and 3699 "Mining Company" means any entity, corporation, partnership, parent or holding company. Any subsidiaries of the above are deemed to be part of the mining company.

As used in Section 3699, "Gross Income" means all income from whatever source derived as defined by, and determined in accordance with, Section 61 of the Internal Revenue Code, Title 26, U.S.C.S.

"Aggregate Products" means decomposed granite, sand and gravel, slag, or stone.

"Industrial Minerals" means borates, cinders, clay, diatomite, dolomite, gypsum, iron ore, lime, limestone, perlite, pumice, rare earth elements, saline compounds, salt, shale, silica, specialty sand, abrasives, asbestos, barite, bituminous rock, decorative rock, dimension stone, feldspar, fluorite, gemstones, graphite, kyanite, lignite, lithium, magnesite, mica, olivine, peat, phosphate, potash,

pyrophyllite, quartz crystal, sea shells, sercite, talc, vermiculite, wollastonite, zeolites, and zircon.

"Gold, Silver, and Precious Metals" means gold (lode), gold (placer), platinum group metals, and silver.

"Base Metals and Other Metals" means antimony, arsenic, chromite, copper, lead, manganese, mercury, molybdenum, nickel, pyrite, tin, titanium, tungsten, uranium, vanadium, and zinc.

#### NOTE

*Authority cited: Sections 2207(d)(1)-(2), Public Resources Code. Reference: Sections 2207 (d)(1)-(2) and 2207(f), Public Resources Code.*

#### HISTORY

1. *Renumbering of former section 3695 to section 3696, and new section filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
3. *Amendment adding Gross income filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
4. *Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
5. *New definitions "Board" and "Mining Company" and amendment of Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
6. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
7. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*

#### § 3696. Operations Subject to Fees.

(a) Each surface mining operation, as defined in Public Resources Code Sections 2719, 2727.1, 2735, and California Code of Regulations, Title 14, Section 3501, unless exempted by Public Resources Code Section 2714,

shall be assessed an annual reporting fee according to the schedule established pursuant to in Section 3698 each May 1 following the reporting calendar year.

(b) In addition to the annual reporting fee, each surface mining operation that is newly permitted shall be assessed an initial reporting fee according to the schedule in Section 3698 of this article.

#### NOTE

*Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.*

#### HISTORY

1. New section filed 4-17-91 as an emergency; operative 5-1-91 (Register 91, No. 19). A Certificate of Compliance must be transmitted to OAL by 8-29-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of law and new section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).
3. Renumbering of former section 3695 to section 3696 filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).
5. Amendment of section and Note filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).
7. Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).
9. Amendment filed 4-20-95 as an emergency;

operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 5-1-95 order transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).
11. Amendment filed 4-9-96 as an emergency; operative 5-1-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).
13. Amendment of subsection (b) and Note filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 4-21-97 order, including further amendments, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).

#### § 3696.5. Board Administration Fee.

Each surface mining operation, as defined in Public Resources Code sections 2719, 2727.1, and 2735, and, Title 14 California Code of Regulations, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed each January 31 an annual administration fee of \$7 (seven dollars) per day for each day of the previous calendar year that the surface mine operation was under the board's jurisdiction as lead agency pursuant to Chapter 9, commencing with Section 2710. The administration fee is due and payable to the State Mining and Geology Board not later than April 1 each year by the surface mine's owner or operator of record on the preceding December 31.

#### NOTE

*Authority cited: Sections 2207 and 2755, Public Resources Code. Reference: Section 2207, Public Resources Code.*

#### HISTORY

1. New section filed 11-8-2004; operative 12-8-2004 (Register 2004, No. 46).

#### § 3697. Fees Due and Delinquent.

(a) The annual reporting fee and Mining Operation

Annual Report (MRRC-2) are due and payable to the Department of Conservation not later than July 1 for the prior reporting year, by the owner or operator of record on the preceding December 31. The initial reporting fee for a new surface mining operation, together with an initial report, are due and payable to the Department of Conservation not later than thirty (30) days after permit approval. An owner or operator of a surface mining operation submitting an annual reporting fee or annual report after July 1, or more than thirty (30) days after permit approval, shall be assessed a penalty fee and interest as provided in Public Resources Code Section 2207 (c) and (d)(5).

(b) Except as otherwise provided in (c), for the purposes of this article, surface mining operations are deemed to be discrete operations per each reclamation plan required.

(c) Multiple site surface mining operations are deemed to be those active surface mining operations which meet all of the following criteria:

(1) One or more surface mining operations are operated on one or more sites by a single operator or mining company;

(2) The total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity product is not precious metals;

(3) All of the sites included are active;

(4) All of the operator or company's entire active surface mining operations located in the State of California are tied to, or located on, the listed sites; and

(d) In addition to the criteria provided in (c), multiple site mining operator's submittal of the annual report form (Mining Operation Annual Report, Form MRRC-2) shall be accompanied by a multiple site form (Multiple Site Single Fee Request, Form MRRC-4M) supplied by the Department of Conservation.

#### NOTE

*Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.*

#### HISTORY

1. *New section filed 4-17-91 as an emergency; operative 5-1-91 (Register 91, No. 19). A Certificate of Compliance must be transmitted to OAL by 8-29-91 or emergency language will be*

*revealed by operation of law on the following day.*

2. *Repealed by operation of law and new section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
3. *Renumbering of former section 3695 to section 3696 filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
4. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
5. *Amendment of section and Note filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
6. *Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
7. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
8. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
9. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
10. *Certificate of Compliance as to 5-1-95 order transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
11. *Amendment filed 4-9-96 as an emergency; operative 5-1-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.*
12. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
13. *Amendment of subsection (b) and Note filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation*



of law on the following day.

14. *Certificate of Compliance as to 4-21-97 order, including further amendments, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*

§ 3698. Fees Calculation. Annual reporting fees cited in sections 3698 and 3699 shall be adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(a) The annual reporting fee for a multiple site surface mining operation shall be four thousand dollars (\$4,000).

(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be \$100; or

(2) Which completed reclamation during the reporting calendar year shall be \$100. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for surface mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments from one reporting calendar year to the next shall be calculated according to the following formula:

$$[((\text{ATRY}) - (\text{ATPY})) / (\text{ATPY})] = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fees set in CCR §3698 (a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount of \$4,000;

Where: ATRY is the Adjusted Total for the current "Reporting Year"

Where: ATPY is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than \$100 or more than \$4,000, as adjusted for the cost of living as

measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter, and may be rounded to the nearest \$1 (one dollar):

Formula 1: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor) if Factor is positive;

Formula 2: Current Year Reporting Fee = Prior Year Reporting Fee times (1 - Factor) if Factor is negative.

(1) Operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed a fee as follows:

Tons	Fee in Dollars
0 - 100	Formula 1 or 2 (not less than \$100)
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	4,000

(2) Operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed a fee as follows:

Ounces	Fee in Dollars
0 - 1	Formula 1 or 2 (not less than \$100)
>1 - 10	Formula 1 or 2
>10 - 50	Formula 1 or 2
>50 - 150	Formula 1 or 2
>150 - 300	Formula 1 or 2
>300	4,000

(3) Operations where the primary mineral commodity produced is base metals or other metals shall be assessed a fee as follows:

Pounds	Fee in Dollars
0 - 10	Formula 1 or 2 (not less than \$100)
>10 - 100	Formula 1 or 2
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	4,000

(d) The initial reporting fee for surface mining operations shall be five hundred dollars (\$500).

(e) The annual reporting fee for newly permitted

surface mining operations which have not yet begun operations shall be one hundred dollars (\$100).

(f) In addition to the annual reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver based on the amount of product mined within the state during the reporting year.

#### NOTE

*Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.*

#### HISTORY

1. *New section filed 4-17-91 as an emergency; operative 5-1-91 (Register 91, No. 19). A Certificate of Compliance must be transmitted to OAL by 8-29-91 or emergency language will be repealed by operation of law on the following day.*
2. *Repealed by operation of law and new section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
3. *Renumbering of former section 3695 to section 3696 filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
4. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
5. *Amendment of section and Note filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
6. *Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
7. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
8. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
9. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
10. *Certificate of Compliance as to 5-1-95 order transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
11. *Amendment filed 4-9-96 as an emergency; operative 5-1-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.*
12. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
13. *Amendment of subsection (b) and Note filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.*
14. *Certificate of Compliance as to 4-21-97 order, including further amendments, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*
15. *Amendment filed 3-8-2004 as an emergency; operative 3-8-2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-6-2004 or emergency language will be repealed by operation of law on the following day.*

#### § 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan

and financial assurance has been obtained; and

(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of four hundred dollars (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member), shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by

the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

#### NOTE

*Authority cited: Section 2207, Public Resources Code.*

*Reference: Section 2207, Public Resources Code.*

#### HISTORY

1. *New section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
2. *Amendment filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
3. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
4. *Amendment filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
5. *Certificate of Compliance as to 4-30-93 order, including amendment of subsections (a)(1)-(2) and (b)(3) transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
6. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
7. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
8. *Amendment of section, Note, and Forms MRRC-4L and MRRC-4M filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
9. *Certificate of Compliance as to 5-1-95 order including amendment of subsection (b) and new Form MRRC-2 transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
10. *Amendment of subsections (a), (a)(3) and (b), and repealer and new Forms MRRC-2, MRRC-4L and MRRC-4M filed 4-9-96 as an emergency language*

*will be repealed by operation of law on the following day.*

11. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
12. *Amendment of subsections (a), (a)(3), (b) and (d), amendment of and Note, and amendment of forms MRRC-2, MRRC-4L and MRRC-4M filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.*
13. *Certificate of Compliance as to 4-21-97 order, including further amendment of subsections (a) and (b) and forms MRRC-2, MRRC-4L and MRRC-4M, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*
14. *Editorial correction amending subsection (a) and inserting inadvertently omitted subsection (c) (Register 2004, No. 11).*
15. *Amendment of subsections (a) and (a)(4) filed 3-8-2004 as an emergency; operative 3-8-2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-6-2004 or emergency language will be repealed by operation of law on the following day.*

## **Article 9. Reclamation Standards**

§ 3700. Applicability. Reclamation of mined lands shall be implemented in conformance with the standards in this Article.

(a) The standards shall apply to each surface mining operation to the extent that:

- (1) they are consistent with required mitigation identified in conformance with the California Environmental Quality Act, provided that such mitigation is at least as stringent as the standards; and
- (2) they are consistent with the planned or actual subsequent use or uses of the mining site.

(b) Where an applicant demonstrates to the satisfaction of the lead agency that an exception to the standards specified in this article is necessary based upon the approved end use, the lead agency may approve a different standard for inclusion in the approved reclamation plan. Where the lead agency allows such an exception, the approved reclamation plan shall specify verifiable, site-specific standards

for reclamation. The lead agency may set standards which are more stringent than the standards set forth in this Article; however, in no case may the lead agency approve a reclamation plan which sets any standard which is less stringent than the comparable standard specified in this Article.

(c) When substantial amendments are proposed to reclamation plans which were approved prior to January 15, 1993, the standards set forth in this Article shall be applied by the lead agency in approving or denying approval of the amended reclamation plan.

(d) The standards in this Article shall not apply to mining operations:

(1) which completed reclamation prior to January 15, 1993, in conformance with an approved reclamation plan; or

(2) for which a reclamation plan has been approved prior to January 15, 1993.

### **NOTE**

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **HISTORY**

1. *New article 9 (sections 3700-3713) filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3701. Definitions. The following definitions shall govern the interpretation of these regulations:

“Arid” means landscapes with an average annual precipitation of five inches or less.

“Contamination” means an impairment of the quality of the waters of the state to a degree which creates a hazard to the public health through poisoning or through the spread of disease.

“Highwall” means the unexcavated face of exposed overburden and ore in a surface mine.

“Indigenous Plants” means plants occurring naturally in an area, not introduced.

“Native Species” means plant species indigenous to California, using pre-European as the historic time reference.

“Noxious Weeds” means any species of plant that is or is likely to become destructive or difficult to control or eradicate, and is termed to be so by the Director of the Department of Food and Agriculture in section 4500, Title 3 of the California Code of Regulations, pursuant to the Food and Agriculture Code section 5004 et seq.

“Vegetative Cover” means the vertical projection of the crown or shoot area of a species to the ground surface expressed as a percentage of the reference area

(percentage can be greater than 100 percent).

“Vegetative Density” means the number of individuals or stems of each species rooted within the given reference area.

“Vegetative Species-richness” means the number of different plant species within the given reference area.

“Wetlands” for the purposes of these regulations, the definition of wetlands shall be the same as defined in the California Fish and Game Code, section 2785, subdivision (g).

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3702. Financial Assurances. Lead agencies shall require financial assurances for reclamation in accordance with Public Resources Code section 2773.1 to ensure that reclamation is performed in accordance with the approved reclamation plan and with this article.

#### NOTE

*Authority cited: Sections 2755, 2773 and 2773.1, Public Resources Code. Reference: Sections 2773 and 2773.1, Public Resources Code.*

#### HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3703. Performance Standards for Wildlife Habitat.

Wildlife and wildlife habitat shall be protected in accordance with the following standards:

(a) Rare, threatened or endangered species as listed by the California Department of Fish and Game, (California Code of Regulations, Title 14, sections 670.2 - 670.5) or the U. S. Fish and Wildlife Service, (50 CFR 17.11 and 17.12) or species of special concern as listed by the California Department of Fish and Game in the Special Animals List, Natural Diversity Data Base, and their respective habitat, shall be conserved as prescribed by the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et. seq., and the California Endangered Species Act, Fish and Game Code

section 2050 et seq. If avoidance cannot be achieved through the available alternatives, mitigation shall be proposed in accordance with the provisions of the California Endangered Species Act, Fish and Game Code section 2050 et seq., and the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq.

(b) Wildlife habitat shall be established on disturbed land in a condition at least as good as that which existed before the lands were disturbed by surface mining operations, unless the proposed end use precludes its use as wildlife habitat or the approved reclamation plan establishes a different habitat type than that which existed prior to mining.

(c) Wetland habitat shall be avoided. Any wetland habitat impacted as a consequence of surface mining operations shall be mitigated at a minimum of one to one ratio for wetland habitat acreage and wetland habitat value.

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3704. Performance Standards for Backfilling, Regrading, Slope Stability, and Recontouring. Backfilling, regrading, slope stabilization, and recontouring shall conform with the following standards:

(a) Where backfilling is proposed for urban uses (e.g., roads, building sites, or other improvements sensitive to settlement), the fill material shall be compacted in accordance with the Uniform Building Code, published by the International Conference of Building Officials and as adopted by the lead agency, the local grading ordinance, or other methods approved by the lead agency as appropriate for the approved end use.

(b) Where backfilling is required for resource conservation purposes (e.g., agriculture, fish and wildlife habitat, and wildland conservation), fill material shall be backfilled to the standards required for the resource conservation use involved.

(c) Piles or dumps of mining waste shall be stockpiled in such a manner as to facilitate phased reclamation. They shall be segregated from topsoil and topsoil substitutes or growth media salvaged for use in reclamation.

(d) Final reclaimed fill slopes, including permanent piles or dumps of mine waste rock and overburden, shall not exceed 2:1 (horizontal:vertical), except when site-

specific geologic and engineering analysis demonstrate that the proposed final slope will have a minimum slope stability factor of safety that is suitable for the proposed end use, and when the proposed final slope can be successfully revegetated.

(e) At closure, all fill slopes, including permanent piles or dumps of mine waste and overburden, shall conform with the surrounding topography and/or approved end use.

(f) Cut slopes, including final highwalls and quarry faces, shall have a minimum slope stability factor of safety that is suitable for the proposed end use and conform with the surrounding topography and/or approved end use.

(g) Permanent placement of piles or dumps of mining waste and overburden shall not occur within wetlands unless mitigation acceptable to the regulatory agencies with jurisdiction over wetlands, which may include the lead agency, has been proposed to offset wetland impacts and/or losses.

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*
2. *Amendment of subsections (a) and (g) filed 10-31-2000; operative 11-30-2000 (Register 2000, No. 44).*

#### § 3704.1 Performance Standards for Backfilling Excavations and Recontouring Lands Disturbed by Open Pit Surface Mining Operations for Metallic Minerals

Notwithstanding the provisions of Section 3700(b) of the Article, no reclamation plan, including any reclamation plan in which the end use is for wildlife habitat, wildland conservation, or open space, or financial assurance for a surface mining operation subject to the provisions of this section, shall be approved by a lead agency unless the reclamation plan meets the provisions of this section. Financial assurances must be maintained in an amount sufficient to provide for the backfilling and contour grading of the mined lands as required in this section.

(a) An open pit excavation created by surface mining activities for the production of metallic minerals shall be backfilled to achieve not less than

the original surface elevation, unless the circumstances under subsection (h) are determined by the lead agency to exist.

(b) Backfilling shall be engineered, and backfilled materials shall be treated, if necessary, to meet all of the provisions of Title 27, California Code of Regulations, Division 2, Chapter 7, Subchapter 1, Mining Waste Management, commencing with Section 22470, and the applicable Regional Water Quality Control Board's Water Quality Control Plan.

(c) Excavated materials remaining in overburden piles, waste rock piles, and processed or leached ore piles not used in the backfilling process and remaining on the mine site shall be graded and contoured to create a final surface that is consistent with the original topography of the area. Care shall be taken to avoid the creation of unnatural topographic features, impediments to natural drainage, or conditions hazardous to human life and wildlife.

(d) Backfilling, recontouring, and revegetation activities shall be performed in clearly defined phases to the engineering and geologic standards required for the end use of the site as stipulated in the approved reclamation plan. All fills and fill slopes shall be designed to protect groundwater quality, to prevent surface water ponding, to facilitate revegetation, to convey runoff in a non-erosive manner, and to account for long term settlement.

(e) The requirements of subsections (a), (b), (c), and (d) notwithstanding, no final reclaimed fill slopes shall exceed 2:1 (horizontal:vertical), nor shall the resultant topography exceed in height the pre-mining surface contour elevations by more than 25 feet. Final fill slopes shall have static and dynamic factor of safety, as determined by an engineer licensed in California, that are suitable for the proposed end use of the site and meet or exceed the requirements of applicable building or grading codes, ordinances, statutes, and regulations. Final slopes must be capable of being revegetated, and shall blend in visually with the local topography. Surface soil shall be salvaged, stored, and reapplied to facilitate revegetation of recontoured material in accordance with the requirements of Section 3711 of this Article.

(f) For the purposes of this section, a metallic mine is defined as one where more than ten percent of the mining operation's gross annual revenues as averaged over the last five years are derived from the production of, or any combination of, the following metallic minerals by the open pit extraction method:  
Precious metals (gold, silver, platinum);

Iron;  
Nickel;  
Copper;  
Lead;  
Tin;  
Ferro-alloy metals (tungsten, chromium, manganese);  
Mercury;  
Uranium and thorium;  
Minor metals including rubidium, strontium, and cesium;  
Niobium and tantalum;

(g) For the purposes of this regulation, an open pit mine is the same as an open pit quarry, opencast mine, or opencut mine, and is defined as a mine working or excavation that is open to the surface and in which the opening is approximately the full size of the excavation.

(h) The requirement to backfill an open pit excavation to the surface pursuant to this section using materials mined on site shall not apply if there remains on the mined lands at the conclusion of mining activities, in the form of overburden piles, waste rock piles, and processed or leached ore piles, an insufficient volume of materials to completely backfill the open pit excavation to the surface, and where, in addition, none of the mined materials has been removed from the mined lands in violation of the approved reclamation plan. In such case, the open pit excavation shall be backfilled in accordance with subsections (b) and (d) to an elevation that utilizes all of the available material remaining as overburden, waste rock, and processed or leached ore.

(i) This regulation does not apply to any surface mining operation as defined in Public Resources Code Section 2735(a) and (b) for which the lead agency has issued final approval of a reclamation plan and a financial assurance prior to December 18, 2002.

#### *NOTE*

*Authority cited: Sections 2755 and 2756, Public Resources Code. Reference: Sections 2733, 2772 and 2773, Public Resources Code.*

#### *HISTORY*

1. *New section filed 12-18-2002 as an emergency; operative 12-18-2002 (Register 2002, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-2003 or emergency language will be repealed by operation of law on the following day.*

2. *New section refiled 4-15-2003 as an emergency; operative 4-15-2003 (Register 2003, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-13-2003 or emergency language will be repealed by operation of law on the following day.*
3. *Certificate of Compliance as to 4-15-2003 order, including repealer and new section, transmitted to OAL 4-18-2003 and filed 5-30-2003 (Register 2003, No. 22).*

#### *§ 3705. Performance Standards for Revegetation.*

Revegetation shall be part of the approved plan, unless it is not consistent with the approved end use.

(a) A vegetative cover suitable for the proposed end use and capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer shall be established on disturbed land unless an artificially maintained landscape is consistent with the approved reclamation plan. Vegetative cover or density, and species-richness shall be, where appropriate, sufficient to stabilize the surface against effects of long-term erosion and shall be similar to naturally occurring habitats in the surrounding area. The vegetative density, cover and species richness of naturally occurring habitats shall be documented in baseline studies carried out prior to the initiation of mining activities. However, for areas that will not be reclaimed to prior conditions, the use of data from reference areas in lieu of baseline site data is permissible.

(b) Test plots conducted simultaneously with mining shall be required to determine the most appropriate planting procedures to be followed to ensure successful implementation of the proposed revegetation plan. The lead agency may waive the requirement to conduct test plots when the success of the proposed revegetation plan can be documented from experience with similar species and conditions or by relying on competent professional advice based on experience with the species to be planted.

(c) Where surface mining activities result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to eliminate compaction and to establish a suitable root zone in preparation for planting.

(d) Prior to closure, all access roads, haul roads, and other traffic routes to be reclaimed shall be stripped of any remaining roadbase materials, prepared in accordance with subsection 3705(g), covered with suitable growth media or topsoil, and revegetated. When it is not necessary to remove roadbase materials for revegetative purposes, lead agencies may set a different standard as specified in section 3700(b) of this Article.

(e) Soil analysis shall be required to determine the presence or absence of elements essential for plant growth and to determine those soluble elements that may be toxic to plants, if the soil has been chemically altered or if the growth media consists of other than the native topsoil. If soil analysis suggests that fertility levels or soil constituents are inadequate to successfully implement the revegetative program, fertilizer or other soil amendments may be incorporated into the soil. When native plant materials are used, preference shall be given to slow-release fertilizers, including mineral and organic materials that mimic natural sources, and shall be added in amounts similar to those found in reference soils under natural vegetation of the type being reclaimed.

(f) Temporary access for exploration or other short-term uses on arid lands shall not disrupt the soil surface except where necessary to gain safe access. Barriers shall be installed when necessary to gain safe access. Barriers shall be installed when necessary to prevent unauthorized vehicular traffic from interfering with the reclamation of temporary access routes.

(g) Native plant species shall be used for revegetation, except when introduced species are necessary to meet the end uses specified in the approved reclamation plan. Areas to be developed for industrial, commercial, or residential use shall be revegetated for the interim period, as necessary, to control erosion. In this circumstance, non-native plant species may be used if they are not noxious weeds and if they are species known not to displace native species in the area.

(h) Planting shall be conducted during the most favorable period of the year for plant establishment.

(i) Soil stabilizing practices shall be used where necessary to control erosion and for successful plant establishment. Irrigation may be used when necessary to establish vegetation.

(j) If irrigation is used, the operator must demonstrate that the vegetation has been self-sustaining without irrigation for a minimum of two years prior to release of the financial assurances by the lead agency, unless an artificially maintained landscape is consistent with the approved end use.

(k) Noxious weeds shall be managed: (1) when they threaten the success of the proposed revegetation; (2) to prevent spreading to nearby areas; and (3) to eliminate fire hazard.

(l) Protection measures, such as fencing of revegetated areas and/or the placement of cages over individual plants, shall be used in areas where grazing, trampling, herbivory, or other causes threaten the success of the proposed revegetation. Fencing shall be maintained until revegetation efforts are successfully completed and the lead agency authorizes removal.

(m) Success of revegetation shall be judged based upon the effectiveness of the vegetation for the approved end use, and by comparing the quantified measures of vegetative cover, density, and species-richness of the reclaimed mined-lands to similar parameters of naturally occurring vegetation in the area. Either baseline data or data from nearby reference areas may be used as the standard for comparison. Quantitative standards for success and the location(s) of the reference area(s) shall be set forth in the approved reclamation plan. Comparisons shall be made until performance standards are met provided that, during the last two years, there has been no human intervention, including, for example, irrigation, fertilization, or weeding. Standards for success shall be based on expected local recovery rates. Valid sampling techniques for measuring success shall be specified in the approved reclamation plan. Sample sizes must be sufficient to produce at least an 80 percent confidence level. There are standard statistical methods in commonly available literature for determining an 80 percent confidence level on a site-by-site basis. Examples of such literature include, but are not limited to, D. Mueller-Dombois and H. Ellenberg, 1974, "Aims and Methods of Vegetation Ecology," John Wiley and Sons, Inc., or C. D. Bonham, 1988, "Measurements for Terrestrial Vegetation," John Wiley and Sons, Inc., and are available at many university libraries. The texts are also available at some local libraries through the Inter-Library Loan Program.

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3706. Performance Standards for Drainage, Diversion Structures, Waterways, and Erosion Control.

(a) Surface mining and reclamation activities shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne Water Quality Control Act, Water Code section 13000, et



seq., and the Federal Clean Water Act, 33 U.S.C. section 1251, et seq.

(b) The quality of water, recharge potential, and storage capacity of ground water aquifers which are the source of water for domestic, agricultural, or other uses dependent on the water, shall not be diminished, except as allowed in the approved reclamation plan.

(c) Erosion and sedimentation shall be controlled during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses, as required by the Regional Water Quality Control Board or the State Water Resources Control Board.

(d) Surface runoff and drainage from surface mining activities shall be controlled by berms, silt fences, sediment ponds, revegetation, hay bales, or other erosion control measures, to ensure that surrounding land and water resources are protected from erosion, gullyng, sedimentation and contamination. Erosion control methods shall be designed to handle runoff from not less than the 20 year/1 hour intensity storm event.

(e) Where natural drainages are covered, restricted, rerouted, or otherwise impacted by surface mining activities, mitigating alternatives shall be proposed and specifically approved in the reclamation plan to assure that runoff shall not cause increased erosion or sedimentation.

(f) When stream diversions are required, they shall be constructed in accordance with:

(1) the stream and lake alteration agreement between the operator and the Department of Fish and Game; and

(2) the requirements of the Federal Clean Water Act, Sections 301 (33 U.S.C. 1311) and Section 404 (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(g) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land reclaimed.

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. New section filed 12-16-92; operative 1-15-96 (Register 92, No. 51).

§ 3707. Performance Standards for Prime Agricultural Land Reclamation. In addition to the standards for topsoil salvage, maintenance, and redistribution, the following standards shall apply to mining operations on prime agricultural lands where the approved end use is agriculture:

(a) Mining operations which will operate on prime agricultural lands, as defined by the U.S. Soil Conservation Service, shall return all disturbed areas to a fertility level as specified in the approved reclamation plan.

(b) When distinct soil horizons are present, topsoil shall be salvaged and segregated by defined A, B, and C soil horizons. Upon reconstruction of the soil, the sequence of horizons shall have the A atop the B, the B atop the C, and the C atop graded overburden.

(c) Reclamation shall be deemed complete when productive capability of the affected land is equivalent to or exceeds, for two consecutive crop years, that of the premining condition or similar crop production in the area. Productivity rates, based on reference areas described in the approved reclamation plan, shall be specified in the approved reclamation plan.

(d) Use of fertilizers or other soil amendments shall not cause contamination of surface or groundwater.

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 3708. Performance Standards for Other Agricultural Land. The following standards shall apply to agricultural lands, other than prime agricultural lands, when the approved end use is agriculture.

In addition to the standards for topsoil salvage, maintenance, and redistribution, non-prime agricultural lands shall be reclaimed so as to be capable of sustaining economically viable production of crops commonly grown in the surrounding areas.

#### NOTE

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 3709. Performance Standards for Building, Structure, and Equipment Removal.

(a) All equipment, supplies and other materials shall be stored in designated areas (as shown in the approved reclamation plan). All waste shall be disposed of in accordance with state and local health and safety ordinances.

(b) All buildings, structures, and equipment shall be dismantled and removed prior to final mine closure except those buildings, structures, and equipment approved in the reclamation plan as necessary for the end use.

*NOTE*

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

*HISTORY*

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3710. Performance Standards for Stream Protection, Including Surface and Groundwater.

(a) Surface and groundwater shall be protected from siltation and pollutants which may diminish water quality as required by the Federal Clean Water Act, sections 301 et seq. (33 U.S.C. section 1311), 404 et seq. (33 U.S.C. section 1344), the Porter-Cologne Act, section 13000 et seq., County anti-siltation ordinances, the Regional Water Quality Control Board or the State Water Resources Control Board.

(b) In-stream surface mining operations shall be conducted in compliance with Section 1600 et seq. of the California Fish and Game Code, section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(c) Extraction of sand and gravel from river channels shall be regulated to control channel degradation in order to prevent undermining of bridge supports, exposure of pipelines or other structures buried within the channel, loss of spawning habitat, lowering of ground water levels, destruction of riparian vegetation, and increased stream bank erosion (exceptions may be specified in the approved reclamation plan). Changes in channel elevations and bank erosion shall be evaluated annually using records of annual extraction quantities and benchmarked annual cross sections and/or sequential aerial photographs to determine

appropriate extraction locations and rates.

(d) In accordance with requirements of the California Fish and Game Code section 1600 et seq., in-stream mining activities shall not cause fish to become entrapped in pools or in off-channel pits, nor shall they restrict spawning or migratory activities.

*NOTE*

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

*HISTORY*

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3711. Performance Standards for Topsoil Salvage, Maintenance, and Redistribution. When the approved reclamation plan calls for revegetation or cultivation of disturbed lands, the following performance standards shall apply to topsoil salvage, maintenance, and redistribution activities:

(a) All salvageable topsoil suitable for revegetation shall be removed as a separate layer from areas to be disturbed by mining operations. Topsoil and vegetation removal shall not precede surface mining activities by more than one year, unless a longer time period is approved by the lead agency.

(b) Topsoil resources shall be mapped prior to stripping and the location of topsoil stockpiles shall be shown on a map in the reclamation plan. If the amount of topsoil needed to cover all surfaces to be revegetated is not available on site, other suitable material capable of sustaining vegetation (such as subsoil) shall be removed as a separate layer for use as a suitable growth media. Topsoil and suitable growth media shall be maintained in separate stockpiles. Test plots may be required to determine the suitability of growth media for revegetation purposes.

(c) Soil salvage operations and phases of reclamation shall be carried out in accordance with a schedule that: (1) is set forth in the approved reclamation plan; (2) minimizes the area disturbed; and (3) is designed to achieve maximum revegetation success allowable under the mining plan.

(d) Topsoil and suitable growth media shall be used to phase reclamation as soon as can be accommodated by the mining schedule presented in the approved reclamation plan following the mining of an area. Topsoil and suitable growth media that cannot be utilized immediately for reclamation shall be stockpiled in an area where it will not

be disturbed until needed for reclamation. Topsoil and suitable growth media stockpiles shall be clearly identified to distinguish them from mine waste dumps. Topsoil and suitable growth media stockpiles shall be planted with a vegetative cover or shall be protected by other equally effective measures to prevent water and wind erosion and to discourage weeds. Relocation of topsoil or suitable growth media stockpiles for purposes other than reclamation shall require prior written approval from the lead agency.

(e) Topsoil and suitable growth media shall be redistributed in a manner that results in a stable, uniform thickness consistent with the approved end use, site configuration, and drainage patterns.

**NOTE**

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**HISTORY**

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

§ 3712. Performance Standards for Tailing and Mine Waste Management.

State Water Resources Control Board mine waste disposal regulations in Article 1, Subchapter 1, Chapter 7 of Title 27, California Code of Regulations, shall govern mine waste and tailings, and mine waste disposal units shall be reclaimed in conformance with this article.

**NOTE**

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**HISTORY**

1. New section 12-16-92; operative 1-15-93 (Register 92, No. 51).
2. Change without regulatory effect amending section filed 5-1-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 18).

§ 3713. Performance Standards for Closure of Surface Openings.

(a) Except those used solely for blasting or those that will be mined through within one year, all drill holes, water wells, and monitoring wells shall be completed or abandoned in accordance with each of

the following:

(1) Water Code sections 13700, et seq. and 13800, et seq.;

(2) the applicable local ordinance adopted pursuant to Water Code section 13803;

(3) the applicable Department of Water Resources report issued pursuant to Water Code section 13800; and

(4) Subdivisions (1) and (2) of section 2511(g) of Chapter 15 of Title 23 regarding discharge of waste to land.

(b) Prior to closure, all portals, shafts, tunnels, or other surface openings to underground workings shall be gated or otherwise protected from public entry in order to eliminate any threat to public safety and to preserve access for wildlife habitat.

**NOTE**

*Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**HISTORY**

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).

**Article 11. Financial Assurance Mechanisms**

§ 3800. Purpose. It is the purpose of this article to specify additional financial assurance mechanisms to assure reclamation pursuant to Public Resources Code Section 2710 et seq. (Surface Mining and Reclamation Act, as amended).

**NOTE**

*Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

**HISTORY**

1. New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).

§ 3801. Authority. Review, approval, adjustment, enforcement, notification, forfeiture and all other responsibilities of the lead agency, operator and Department of Conservation with respect to financial assurances shall be conducted as prescribed in Public Resources Code Section 2710 et seq. unless expressly

outlined in this article.

#### NOTE

*Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3802. Definitions. The following definitions shall govern the interpretation of this article:

(a) "Budget Set Aside" means a financial assurance mechanism, meeting the requirements of Section 3806.2 of this article, by which a government entity proposes to make specific identified monies within the entity's budget available to perform reclamation pursuant to the approved reclamation plan.

(b) "Financial Assurance Amount" means that amount of money necessary to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total of which shall be calculated in accordance with section 3804, and shall constitute an obligation to pay by the operator.

(c) "Financial Assurance" means an instrument, fund or other form of Financial Assurance as provided in Section 2773.1(a) and (e) of the Public Resources Code and this Article.

(d) "Pledge of Revenue" means a financial assurance mechanism meeting the requirements of Section 3806.1, of this Article, by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2734, Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3803. Financial Assurance Mechanisms. As outlined by this article, financial assurances may take the form of any one or a combination of the following, which the lead agency, upon review by the Department of Conservation, reasonably determines are adequate to perform reclamation in accordance with the approved reclamation plan.

(a) For non-governmental entity operators:

(1) Surety bonds;

(2) Irrevocable letters of credit; and

(3) Trust funds;

(b) For governmental entity operators:

(1) Surety bonds;

(2) Irrevocable letters of credit;

(3) Trust funds;

(4) Pledges of Revenue; or

(5) Budget Set Aside.

#### NOTE

*Authority cited: Section 2773.1, Public Resources Code.*

*Reference: Section 2773.1(e), Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3804. Calculation of Financial Assurance Amount.

(a) The Financial Assurance Amount shall be calculated as prescribed in Public Resources Code Section 2773.1 and based on:

(1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;

(2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;

(3) the number of units of each of these activities, if applicable;

(4) a contingency amount not to exceed 10% of the reclamation costs.

(b) The calculated amount should not include the cost of completing mining of the site.

(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).

#### NOTE

*Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3805. Review by the Department of Conservation.

Pursuant to Section 2774(c), Public Resources Code, the lead agency shall submit a copy of the proposed Financial Assurance and the Calculation of Financial Assurance Amount submitted by the operator pursuant to Section 3804 to the Director of the Department of Conservation for review. With this submittal the lead agency shall include the information and documentation relied upon in calculating the amount of the proposed Financial Assurance and indicate to the Director that the Financial Assurance Amount is adequate for the lead agency or the Department of Conservation to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan. The Director shall have 45 days, upon receipt, to prepare written comments regarding the proposed Financial Assurance, if he/she so chooses.

#### NOTE

*Authority cited: Section 2774, Public Resources Code. Reference: Section 2774(c), (d), Public*

*Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§3805.5 Modification or Release of Financial Assurance

(a) Prior to the modification of a financial assurance amount, or to the release of the financial assurance instrument to which both the lead agency and the Department of Conservation are co-beneficiaries under Public Resources Code section 2773.1, the lead agency shall provide to the director of the department the following documents at one time:

(1) An inspection report, prepared by a qualified person as provided for in Public Resources Code section 2774, indicating that there are aspects of the surface mining operation that require modification of the existing financial assurance amount, or stating that the mined land has been reclaimed in accordance with the approved reclamation plan, and that there are no aspects of the reclaimed surface mining operation that are inconsistent with the meaning of reclamation as defined in Public Resources Code section 2733, and the Surface Mining and Reclamation Act of 1975, Chapter 9, commencing with section 2710.

(2) A revised financial assurance cost estimate prepared by the operator and accepted by the lead agency, or prepared by the lead agency, in accordance with Public Resources Code section 2773.1, with supporting documentation, indicating the specific cost changes to the existing financial assurance amount, or indicating that there are no further outstanding reclamation liabilities to be included in the financial assurance.

(3) A statement by the lead agency, with supporting documentation that may include the most recent inspection report and any geological and engineering reports prepared as part of the inspection report, that the mined land remains subject to a financial assurance as modified, or that the mined land has been reclaimed in accordance with the approved reclamation plan, that there are no outstanding reclamation liabilities, and

recommending to the director that the financial assurance be released.

(b) The director shall have 45 days from the date of receipt of the documents to review and comment on them as provided for in Public Resources Code section 2774, and to conduct the director's own inspection of the surface mining operation if the director determines it necessary under Public Resources Code section 2774.1, and do one of the following:

(1) Notify the lead agency of the director's concurrence that the modified financial assurance amount is adequate, or that there are no outstanding reclamation liabilities on the mined land and that the original financial assurance should be released pursuant to Public Resources Code section 2773.1, at which time the financial assurance shall be released; or,

(2) Notify the lead agency that the director has found, based upon an inspection, aspects of the surface mining operation that require additional modifications to the financial assurance amount, or aspects that are not in compliance with the approved reclamation plan and the Surface Mining and Reclamation Act of 1975; or,

(3) Commence the financial assurance forfeiture process under Public Resources Code section 2773.1.

(c) If a violation by the surface mining operation is confirmed by an inspection either by the lead agency or by the director, then the lead agency, or the director, may take actions under Public Resources Code section 2774.1 to ensure that the violation is corrected. In any event, the financial assurance shall not be released until the violation is corrected.

(d) Prior to sending written notification and release of financial assurances as provided under Public Resources Code section 2773.1, the lead agency shall obtain written concurrence of the director that the completion of reclamation of the mined land disturbed by the surface mining operation is in accordance with the requirements of the lead agency-approved reclamation plan.

(e) If a violation of the Surface Mining and Reclamation Act of 1975 or of the approved reclamation plan is confirmed by the inspection, and the lead agency does not take action under Public Resources Code section 2774.1 to ensure that the violation is corrected or take action under Public

Resources Code section 2773.1 for forfeiture of the financial assurance, then the director may refer the matter to the board for further action under Public Resources Code section 2774.4.

#### NOTE

*Authority: Section 2755, Public Resources Code;*  
*References: Sections 2729, 2731, 2733, 2735 2773.1, 2774, and 2774.1, Public Resources Code.*

#### HISTORY

1. *New section filed 5-11-2004; operative 5-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 20).*

§ 3806. Surface mining operations owned and operated by state or local governmental entities.

In addition to the mechanisms provided in Public Resources Section 2773.1 and this article, a financial assurance mechanism for reclamation for a surface mining operation owned and operated by the state, county, city, district, or other political subdivision may be in the form of a:

- (a) Pledge of Revenue; or
- (b) Budget Set Aside.

These financial assurance mechanisms may only be used by the state, county, city, district, or other political subdivision.

#### NOTE

*Authority cited: Section 2773.1, Public Resources Code.*  
*Reference: Section 2773.1(e), Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3806.1. Pledge of Revenue.

(a) A pledge of revenue shall consist of a resolution or other appropriate document from the governing body of the state, county, city, district, or other political subdivision responsible for reclamation of the mined lands pursuant to the approved reclamation plans. The resolution or document shall remain effective continuously throughout the period in which the pledge of revenue is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The pledge of revenue shall contain the following items:

- (1) The resolution or document establishing the pledge of revenue;
- (2) The types and sources of pledged revenue;
- (3) The period of time that each source of revenue is pledged to be available;
- (4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and
- (5) The authorization for the lead agency or the Department of Conservation to use the proceeds of the pledge to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the pledge pursuant to Section 2773.1(b).

(c) The state, county, city, district, or other political subdivision may pledge any following types of revenue that it controls and that will be available in a timely manner to conduct and complete reclamation:

- (1) Fees, rents, or other charges;
- (2) Tax revenues within statutory limitations; and/or
- (3) Other guaranteed revenues that are acceptable to the lead agency and the Board.

(d) If the governmental entity ceases at any time to retain control of its ability to allocate any pledged revenue to conduct and complete reclamation, the entity shall notify the lead agency and the Department of Conservation and shall obtain alternative coverage within 60 days after control lapses.

#### NOTE

*Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3806.2. Budget Set Aside.

(a) A Budget Set Aside shall consist of a specific fund or line item set aside by the state, county, city, district or other political subdivision responsible for reclamation of the mined lands. The Budget Set Aside shall remain effective continuously throughout the period in which the Budget Set Aside is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The set aside shall contain the following items:

(1) A resolution or other appropriate document establishing the set aside or line item including proof of approval by the governing body or appropriate official of the state, county, city, district or other political subdivision;

(2) The types and sources of specific funds;

(3) The period of time that each funding source is to be available;

(4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and

(5) The authorization for the lead agency or the Department of Conservation to use the funds to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the set aside pursuant to Section 2773.1(b).

#### NOTE

*Authority cited: Section 2773.1, Public Resources Code.*

*Reference: Section 2773.1(e), Public Resources Code.*

#### HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3806.3. Acceptance of Liability.

(a) An Acceptance of Liability shall consist of a specific written statement by a Federal entity responsible for performing reclamation that obligates that Federal entity for all costs associated with the full reclamation of mined lands in accordance with the requirements of an approved reclamation plan.

(b) The Acceptance of Liability shall contain the following items:

(1) A duly authorized resolution, statement, or other appropriate document that guarantees liability and obligates the Federal entity to reclaim the mine site; and,

(2) A statement that if the Federal entity ceases at

any time to retain control of the mine operation, that the Federal entity's Acceptance of Liability shall remain in effect until the succeeding mine operator provides a financial assurance mechanism provided for in Public Resources Code Section 2773.1 and this Article 11. In no event shall any succeeding mine operator commence surface mining operations until a financial assurance mechanism is accepted by the lead agency.

*NOTE*

*Authority cited: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

*HISTORY*

1. *New section filed 1-28-2005; operative 2-27-2005 (Register 2005, No. 4).*

§ 3806.5. Surface Mining Operations Owned and Operated by a Federal Entity on State Owned Land.

In addition to the financial assurance mechanisms provided in Public Resources Code Section 2773.1 and this Article 11, a financial assurance mechanism for reclamation for a surface mining operation owned and operated on State lands by a Federal entity may be in the form of a:

- (a) Pledge of Revenue
- (b) Budget Set Aside
- (c) Acceptance of Liability

*NOTE*

*Authority cited: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

*HISTORY*

1. *New section filed 1-28-2005; operative 2-27-2005 (Register 2005, No. 4).*

**Article 11.5. Forfeiture of Financial Assurance**

§ 3810. Purpose

The purpose of this article is to define the procedures to be followed by the lead agency, or the board acting at the request of the director, or when the board is acting as lead agency pursuant to Public Resources Code Section 2774.4 or Section 2774.5, in determining whether a surface mine operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation,

and should therefore forfeit its financial assurance pursuant to Public Resources Code Section 2773.1(b).

*NOTE*

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2773.1, 2774.4 and 2774.5, Public Resources Code.*

*HISTORY*

1. *New article 11.5 (sections 3810-3817) and section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3811. Circumstances Leading to a Hearing.

A leading agency or the board may conduct a hearing to determine the forfeiture of financial assurances when any of the following circumstances has occurred:

(a) Unless an appeal of a financial assurance amount is pending before the board pursuant to Public Resources Code Section 2770, an operator has failed to provide an acceptable financial assurance mechanism within 30 days of notification by the lead agency of its approval of an adequate financial assurance amount. Acceptable financial assurance mechanisms are described in Title 14, California Code of Regulations Section 3803.

(b) The operator has failed to provide the lead agency with a revised financial assurance cost estimate as required by Public Resources Code Section 2773.1 that adequately addresses the criteria contained in Title 14, California Code of Regulations Section 3804 within 30 days of receipt of notification to provide a revised cost estimate.

(c) An acceptable financial assurance mechanism has lapsed and has not been renewed or replaced by another acceptable mechanism within 30 days and any remaining financial assurance coverage is not, according to the lead agency, adequate by itself to ensure the reclamation of the mine site according to the approved reclamation plan.

(d) The lead agency is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as defined in Public Resources Code Section 2721.1.

(e) The surface mining operation meets the criteria stated under Public Resources Code Section 2770(h)(6). Submitting of an interim management plan after the operator has been notified that his or her mine meets the criteria in Section 2770(h)(6) shall not prevent the lead agency or the board from proceeding with its hearing.

*NOTE*

*Authority cited: Section 2755, Public Resources Code.*



*Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3812. Public Hearing.

The determination by the lead agency or the board that a surface mine operator is financially incapable of reclaiming according to an approved reclamation plan, or that the operator has abandoned a mine site without commencing reclamation, shall be made during a public hearing. The hearing may be conducted as part of a regularly scheduled business meeting of the lead agency, or may be held during a special meeting. Where the board is the lead agency, the board may delegate the hearing to a committee composed of not less than two board members selected by the board Chairman or the Chairman's designee. The determination of the board committee shall be reported to the full board for its action at its next meeting.

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3813. Hearing Procedure – Notice

(a) The local lead agency shall give prior notice of the public hearing in accordance with the provisions of its local ordinances.

(b) Where the board is the lead agency, at least 10 days prior to the hearing date, public notice shall be given as follows:

(1) Mailing the notice to the operator and to the director.

(2) Mailing the notice to any person who requests notice of the hearing;

(3) Mailing the notice to the board's regular mailing list; and,

(4) Mailing the notice to the city or county jurisdiction within which the surface mining operation is located.

(c) The notice of hearing shall include the following:

(1) The name of the surface mine operator or agent of record;

(2) Identification of the surface mining operation, and a brief description of the location of the operation by reference to any commonly known landmarks in the area;

(3) A statement that the purpose of the hearing is to determine the financial capability of the operator to reclaim his or her mining operation in accordance with the approved reclamation plan;

(4) A statement inviting the operator, public agencies, and other interested persons to make statements at the hearing regarding the decision of the lead agency; and,

(5) The time, date, and location of the public hearing.

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3814. Administrative Record.

The administrative record shall consist of, but not be limited to, the following:

(a) The approved reclamation plan for the mining operation;

(b) The currently approved financial assurance mechanism in an amount certain;

(c) The name and address of the surface mining operator and the name and address of any person designated by the operator as an agent for the service of process;

(d) A detailed cost estimate provided by the operator and supporting a financial assurance amount prepared by a qualified individual, such as a licensed grading contractor, licensed civil engineer, or a licensed geologist, who must be licensed in the state of California, and prepared not more than six months from the last annual inspection of the mine conducted by the lead agency;

(e) A copy of the last annual inspection report conducted by the lead agency pursuant to Public Resources Code Section 2774, or any other more recent inspection conducted by the lead agency or the Department of Conservation.

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2773.1 and 2774, Public Resources Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

**§ 3815. Criteria for Determining Financial Capability.**

The lead agency or the board shall use, but not be limited to, the following criteria when determining the financial capability of a mine operator to perform reclamation. It is the sole responsibility of the surface mine operator to provide the lead agency or the board with sufficient information to reasonably demonstrate his or her financial capability. An operator shall be found financially incapable if the lead agency or the board makes any of the following findings:

(a) The operator is incapable of providing, or refuses to provide, a financial assurance in an amount deemed adequate by the lead agency or the board; or,

(b) The operator is incapable of providing, or refuses to provide, a financial assurance mechanism approved by the board in Section 3803 of this subchapter; or,

(c) The lead agency, the board, or the director, is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as define in Public Resources Code Section 2727.1; or,

(d) The mine operation meets the criteria stated in Public Resources Code Section 2770(h)(6).

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

**§ 3816. Hearing Procedures – Sequence.**

(a) The public hearing conducted before the board shall normally proceed in the following manner; a local lead agency may conduct the hearing sequence according to its locally adopted procedures:

- (1) Identification of the record;
- (2) Statements of behalf of the lead agency;
- (3) Statements on behalf of the operator
- (4) Statements on behalf of he public;
- (5) Rebuttal on behalf of the lead agency;
- (6) Rebuttal on behalf of the operator; and

(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman of the board or the Chairman's designee for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the board at least five days prior to the hearing.

(d) The public hearing conducted before the board or a lead agency shall be recorded.

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

**§ 3817. Hearing Procedures – Determination**

Following the public hearing, the lead agency or the board shall determine whether, based on the record before it and the criteria described in Section 3815 of the Article, the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation. If the operator is determined to be financially incapable of performing reclamation or to have abandoned the operation, then the following shall occur:

(a) The lead agency, or the director in cases where the Board is the lead agency, shall notify the operator within 10 days of the date of determination of its intent to take appropriate actions to cause forfeiture of the operator's financial assurances. Notification shall be made by personal service or certified mail.

(b) The lead agency, or the director, or the board in cases where the board is the lead agency, shall follow the procedures described in Public Resources Code Section 2773.1(b).

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2733.1, Public Resourced Code.*

**HISTORY**

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

**Article 12. Administrative Penalty Petition Procedures**

§ 3900. Purpose of Regulations.

The regulations contained in this article govern procedures for petitions to the State Mining and Geology Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an Administrative Penalty by the Director of the Department of Conservation.

*NOTE*

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

*HISTORY*

1. New article 12 (sections 3900-3911) and section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.
2. New article 12 (sections 3900-3911) and section refilled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).

§ 3901. Filing of Petition / Notice of Defense.

Any person filing a petition to the Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an administrative penalty by the Director of the Department of Conservation shall, within 30 days of the date of issuance of the order setting an administrative penalty, file a petition / notice of defense with the Board requesting a hearing. The petition / notice of defense shall be on the form set forth in Section 3911 of this article, or shall supply the following information to the Board:

(1) Written statements, with supporting documentation, indicating specifically the basis for the petitioner's challenge of the Director's order of administrative penalty;

(2) A written statement advising the Board of the name, address and telephone number of the petitioner's representative, if any.

*NOTE*

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

*HISTORY*

1. New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.
2. New section refilled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).
3. Amendment of first paragraph filed 9-30-2002; operative 10-30-2002 (Register 2002, No. 40).

§ 3902. Determination of Jurisdiction.

The Chairman of the Board, or the Chairman's designee who is a Board member, shall determine within 15 days of receipt of the information required by Section 3901 of this article, whether the petition is within the jurisdiction of the Board for the purpose of hearing the petition, and determine whether the petition's challenge raises substantial issues related to the validity of the allegations supporting the Director's order. If the Chairman finds, based upon the criteria stated in (a), (b), and (c) below, that the petition raises no substantial issues with respect to the Director's allegations contained in the order of administrative penalty, or has not been filed within statutory time limits, then the Chairman shall refuse to grant a hearing on the petition. In making these determinations, the Chairman shall consider the following:

(a) Whether the filing of the petition/notice of defense with the Board is within the time limits stipulated in Public Resources Code Section 2774.2;

(b) Whether the petition specifically relates to the allegations contained in the Director's notice and order of administrative penalty;

(c) Whether prima facie documentation supporting the petition's position is reasonably sufficient to substantiate the petition's challenge.

*NOTE*

*Authority: Sections 2755 and 2774.2, Public Resources*

*Code; Reference: Section 2774.2, Public Resources Code.*

#### **HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Procedures Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

#### **§ 3903. Administrative Record.**

The Administrative Record shall consist of the record before the Director, evidence submitted on behalf of the petitioner, any other relevant evidence which, in the judgment of the Board, should be considered applicable, and evidence presented during the hearing on the petition.

#### **NOTE**

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

#### **HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

#### **§ 3904. Hearing Procedures – Scheduling.**

The Board shall schedule and hold a public hearing on a petition no later than 60 days from the Chairman's acceptance of the petition, or at such time as may be mutually agreed upon by the Board and the petitioner. The hearing may be conducted as

part of a regular business meeting of the Board, or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in or near the jurisdiction from which the petition originated, but may otherwise schedule such petitions to be heard in Sacramento.

#### **NOTE**

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

#### **HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

#### **§ 3905. Hearing Procedures - Authority for Delegation.**

The Board may delegate conduct of the hearing to a committee composed of three members of the Board, who shall consist of either the Chairman or Vice Chairman of the Board, and two other members of the Board selected by the Chairman. The Chairman or Vice Chairman shall conduct the hearing. The record of the hearing and the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3910 of this article.

#### **NOTE**

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

#### **HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of*

*Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*

2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3906. Hearing Procedures - Notice.

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing or delivering by personal service the notice to the petitioner and to the petitioner's lead agency;

(2) Mailing or delivering by personal service the notice to the Director of the Department of Conservation.

(3) Mailing the notice to any person who requests notice of the petition or hearing; and,

(4) Mailing the notice to the Board's regular mailing list.

(b) The notice of hearing shall include the following:

(1) The name of the petitioner;

(2) A statement describing the basis for the action;

(3) The amount of the administrative penalty petitioned;

(4) The time, date, and location of the public hearing.

**NOTE**

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

**HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*

2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3907. Hearing Procedures – Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3901, 3902, and 3903 of this article.

**NOTE**

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

**HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3908. Hearing Procedures - Recording and Transcription.

Hearings conducted under the procedures of this article shall be electronically recorded by the Board. Cost of transcription or reproduction of the electronic recording, if requested, shall be borne by the party making such request.

**NOTE**

*Authority: Section 2755, Public Resources Code; Reference: Section 2755, Public Resources Code.*

**HISTORY**

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*

2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3909. Hearing Procedures - Use of Informal Hearing Procedure and Sequence.

(a) The Board may conduct the petition hearing under this article pursuant to the informal hearing adjudicative proceedings described in the California Administrative Procedure Act. The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(b) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the petitioner;
- (3) Statements on behalf of the Director;
- (4) Statements on behalf of the lead agency;
- (5) Statements on behalf of the public;
- (6) Rebuttal on behalf of the petitioner;
- (7) Rebuttal on behalf of the Director;
- (8) Motion to close the public hearing.

(c) Notwithstanding the above, the Chairman or the Chairman's designee (Board member) for the purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(d) The Chairman or the Chairman's designee (Board member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Four copies of any written statements shall be submitted to the Board at least ten days prior to the hearing.

(e) The actions of the Chairman or the Chairman's designee (Board member) under this section are not subject to judicial review.

(f) If the board determines that the petition for hearing has been withdrawn and more than 30 days has passed since the date of issuance of the order setting an administrative penalty, the order setting the administrative penalty shall not be subject to review by any court or agency.

(g) The actions of the Chairman or the Chairman's designee (Board member) under this section are not subject to judicial review.

NOTE

*Authority: Sections 2755 and 2774.2, Public Resources Code; Article 10, Administrative Procedure Act; Reference: Section 2774.2, Public Resources Code; Article 10, Administrative Procedure Act.*

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*
3. *New subsections (e) and (f) and subsection relettering filed 9-30-2002; operative 10-30-2002 (Register 2002, No. 40).*

§ 3910. Hearing Procedures – Determination.

(a) Following the public hearing, the Board shall determine: (1) whether the alleged violations cited in the Director's order are supported by substantial evidence in light of the whole record before it; and, (2) the action the Board should take to affirm, modify, or set aside, in whole or in part, the administrative penalty issued by the Director. The Board shall issue its own order upholding its determination.

(b) Modify means to change the administrative penalty from its original construction by the director. The board may modify the administrative penalty, in whole or in part, by such measures as it deems appropriate which include, but are not limited to, increasing or decreasing the penalty amount, establishing compliance deadlines, and structuring a method for payment of the penalty.

(c) Notification of the Board's determination shall be made by certified mail or personal service to the petitioner, the lead agency, and the Director within 15 days following the regular business meeting of the Board at which the decision is made.

NOTE

*Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.*

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*
3. *New subsection (b) and subsection relettering filed 9-30-2002; operative 10-30-2002 (Register 2002, No. 40).*

§ 3911. Petition / Notice of Defense Form.

**STATE OF CALIFORNIA**  
**DEPARTMENT OF CONSERVATION**  
**STATE MINING AND GEOLOGY BOARD**

<b>IN THE MATTER OF THE</b>	)	<b>Case No.</b>
<b>ADMINISTRATIVE PENALTY</b>	)	
<b>ASSESSED AGAINST:</b>	)	<b>PETITION/</b>
	)	<b>NOTICE OF DEFENSE</b>
	)	
<b>an individual,</b>	)	
	)	
<b>d.b.a.</b>	)	
	)	
	)	
<b>PETITIONER(S)</b>	)	
_____	)	

- ( ) I acknowledge receipt of this action assessing an administrative penalty under Public Resources Code Section 2774.1 (c) against me or the company for which I am the agent.
- ( ) I request a hearing before the State Mining and Geology Board.
- ( ) I object to the action on the ground that it does not state acts or omissions upon which the Department of Conservation may proceed.
- ( ) I object to the form of the action on the ground that it is so indefinite or uncertain that I cannot identify the transaction or prepare a defense.
- ( ) I admit the action in whole or in part. (Indicate which parts you admit by paragraph number or list on a separate page facts or allegations admitted.)
- ( ) I deny the action in whole or in part. (Indicate which parts you deny by paragraph number or list on a separate page facts or allegations denied.)
- ( ) I have no personal knowledge of the facts or allegations. (Indicate which parts by paragraph number or on a separate page.)
- ( ) I present the following new matter by way of defense:  
(On a separate page, list other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the alleged violation. Be as specific as you can. If you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) cop(y/ies) if you can).
- ( ) I wish to present the following information, statement, etc. in addition:  
(Use a separate page, if needed.)



( ) I have documents, exhibits, declarations under penalty of perjury and/or other materials that I am attaching to this form or that I want to be made a part of the administrative record for this administrative penalty. (Please list in chronological order by date, author and title and enclose a copy with this completed form.)

( ) I object to the action on the ground that, under the circumstances, compliance with the requirement of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights. (List the other regulation(s).)

( ) I will pay the full assessed amount and waive a hearing.

**DO NOT SEND CASH.** Please note your case number on your remittance, made payable to: **State of California, Department of Conservation**, to ensure proper credit and mail it to this address: Department of Conservation, Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, California 95814.

If you intend to be represented by an attorney, please state his/her name, address, and telephone number. Otherwise, state the address and phone number where you want legal documents sent. Mail this Notice of Defense to: *Executive Officer, State Mining and Geology Board, 801 K Street, MS 24-05, Sacramento, California 95814.*

**DATED:** \_\_\_\_\_

\_\_\_\_\_  
**Petitioner's Signature**

\_\_\_\_\_  
**Name of Counsel/Petitioner (circle one)**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City**

\_\_\_\_\_  
**State**

\_\_\_\_\_  
**Zip**

#### *HISTORY*

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

### **Article 13. Selection of Professional Service Firms**

§ 3920. Selection of Professional Service Firms.

(a) The purpose of these regulations is to establish those procedures authorized and required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. These regulations are specific to the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710, et seq.)

(b) Selection by the board for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management, firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

#### **NOTE**

*Authority cited: Sections 2755-2759, Public Resources Code; and Section 4526, Government Code. Reference: Sections 4525-4529.5, Government Code.*

#### **HISTORY**

1. *New article 13 (sections 3920-3930) and section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3921 Definitions, as Used in These Regulations

(a) "Small business" shall mean a small business firm as defined by the Director of General Services (section 1896 of Title 2 of the California Code of Regulations) pursuant to section 14837 of the Government Code.

(b) "Architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services" are those services to be procured outside State of California Civil Service procedures and of a chapter necessarily rendered by an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor but may include ancillary services logically or justifiably performed in connection therewith.

(c) "Project" means a project as defined in Section 10105 of the Public Contract Code, or as defined in the Public Resources Code Section 21065.

#### **NOTE**

*Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 14837, Government Code; Section 10105, Public Contract Code; and Section 21065, Public Resources Code.*

#### **HISTORY**

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3922. Establishment of Criteria.

(a) The board shall establish criteria, on a case by case instance, which will comprise the basis for selection for each project. The criteria shall include such factors as professional excellence, demonstrated competence specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload ability to meet schedules, nature quality of completed work, reliability and continuity of the firm, location, and other considerations deemed relevant. Such factors shall be weighted by the board according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

(b) In no event shall the criteria include practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. Board members with a relationship to a person or business entity seeking a contract under this section are prohibited from participating in the selection process if the board member would be subject to the prohibition of Section 87100 of the Government Code.

#### **NOTE**

*Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 87100, Government Code.*

#### **HISTORY**

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3923. Estimate of Value of Services.

Before any discussion with any firm concerning fees, the board may cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until

award of contractor abandonment of any further procedure for the services to which it relates. At any time the board determines the estimates to be unrealistic because of rising costs, special conditions, or for other relevant considerations, the estimate may be reevaluated and modified if necessary.

*NOTE*

*Authority cited: Section 4576, Government Code.*

*Reference: Section 4528, Government Code.*

*HISTORY*

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3924. Request for Proposals.

(a) Where a project requires architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services, the board shall make an announcement through a publication of the respective professional society, if any exist, in a construction trade journal or, if none exist, in other appropriate publications that are published within a reasonable time frame such that a lengthy publication delay does not adversely affect the project.

(b) The announcement shall contain the following information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data will be received.

(c) The board shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the board concludes that small business firms could be especially qualified. A failure of the board to send a copy of an announcement to any firm shall not operate to preclude any contract.

*NOTE*

*Authority cited: Section 4526, Government Code.*

*Reference: Section 4527, Government Code.*

*HISTORY*

1. *New section filed 10-4-2000; operative 10-14-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 4)*

§ 3925. Selection of Firm.

After expiration of the period stated in the publications or other public announcements, the board shall evaluate statements of qualifications and

performance data which have been submitted to the board. Discussions shall be conducted with no less than three firms regarding the required service. Where three firms cannot be found which could provide the required service, a full explanation including names and addresses of firms and individuals requested to submit proposals must be entered in the files. From the firms with which discussions are held, the board shall select no less than three, provided at least three firms submit proposals, in order of preference, based upon the established criteria, which are deemed to be the most highly qualified to provide the services required.

*NOTE*

*Authority cited: Section 4526, Government Code.*

*Reference: Sections 4526-4527, Government Code.*

*HISTORY*

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3926. Negotiation.

The board shall attempt to negotiate a contract with the most highly qualified firm. When the board is unable to negotiate a satisfactory contract with this firm with fair and reasonable compensation provisions, as determined by the procedure set forth in Section 3923 if those procedures were used, negotiations shall be terminated. The board shall then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The board shall then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, additional firms may be selected in the manner prescribed in this article and the negotiation procedure continued.

*NOTE*

*Authority cited: Section 4526, Government Code.*

*Reference: Section 4528 Government Code.*

*HISTORY*

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3927. Amendments.

In instances where the board effects a necessary change in the project during the course of performance of the contract, the firms' compensation may be adjusted by negotiation of a mutual written agreement in a fair and reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the contemplation of the parties.

**NOTE**

*Authority cited: Section 4526, Government Code.*

*Reference: Section 4526, Government Code.*

**HISTORY**

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

**§ 3928. Contracting in Phases.**

Should the board determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions that the board, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

**NOTE**

*Authority cited: Section 4526, Government Code.*

*Reference: Section 4526, Government Code.*

**HISTORY**

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

**§ 3929. Board's Power to Require Bids**

Where the board determines that the services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of bids rather than by following the foregoing procedures for requesting proposals and negotiation.

**NOTE**

*Authority cited: Section 4526, Government Code.*

*Reference: Section 4529, Government Code.*

**HISTORY**

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

**§ 3930. Exclusions.**

The provisions of this article shall not apply to service agreements for an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor, engaged to provide consulting services on specific problems on projects where the architectural, landscape architectural, engineering, environmental, land surveying, or construction project management work is being performed by State of California Civil Service employees.

**NOTE**

*Authority cited: Section 4526, Government Code.*

*Reference: Section 4526, Government Code.*

**HISTORY**

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

**Article 14. Appeals of Orders to Comply with the Surface Mining And Reclamation Act of 1975**

**§ 3940. Purpose of Regulations.**

The regulations contained in this article govern procedures affecting the review of orders to comply with the Surface Mining and Reclamation Act of 1975 (ACT) issued by the director of the department, or by the board when acting in the capacity of lead agency pursuant to Public Resources Code Section 2774.4.

**NOTE**

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2774.1 and 2774.4, Public Resources Code.*

**HISTORY**

1. *New article 14 (sections 3940-3948) and section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

**§ 3941. Determination of Jurisdiction.**

(a) The Chairman of the board, or the Chairman's designee, shall determine whether the review of the order is within the jurisdiction of the board for the purposes of hearing the alleged violation. If the Chairman or the designee finds that the criteria listed in (1) and (2) below have been satisfied, then he or she shall schedule a hearing of the order before the board, otherwise he or she shall

refuse to grant hearing. In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(1) Whether the order addresses violations related to the Act which have been confirmed by findings during and annual inspection or as the result of another physical site inspection of the mine;

(2) Whether the alleged violation has extended beyond 30 days from the date of receipt by the operator of notification from the director or the board

(b) The Chairman of the board or designee shall make such a determination within 15 days of receipt of an order issued by the director. Where the board issues the order to comply pursuant to its lead agency authority under Public Resources Code Section 2774.4, no independent determination by the Chairman or the designee is required. The board shall notify the appellant and the director of its determination by certified mail or personal service.

*NOTE*

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

*HISTORY*

1. *New section file 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3942. Administrative Record.

The administrative record shall consist of the information that was before the director for an order issued by the director, or before the board for an order issued by the board, at the time the order was issued and which comprised the basis for the order. The information before the director, or the board, shall consist of but may not be limited to the following:

(a) The name and address of the surface mining operator and the name and address of any person designated by the operator as an agent for the service of process;

(b) A general description of the surface mining operation;

(c) A description of the alleged violation specifying which aspects of the surface mine's activities or operations are inconsistent with the Act;

(d) A time for achieving compliance that the director, or the board, has determined to be

reasonable.

*NOTE*

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

*HISTORY*

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3943. Hearing Procedures – Scheduling.

The board shall schedule and hold a public hearing on an order no sooner than 30 days from the date of issuance of the order. In no case shall the hearing be scheduled beyond 60 days after the issuance of the order. The hearing may be scheduled as part of a regular business meeting of the board or may be conducted by a committee of the board.

*NOTE*

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

*HISTORY*

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3944. Hearing Procedures – Authority for Delegation

The board may delegate conduct of the hearing to a committee of at least two members of the board to be appointed for that hearing by the Chairman of the board. The Chairman of the board or the Chairman's designee shall conduct the hearing; the recommendations of the hearing committee shall be presented to a quorum of the board at its next regular business meeting for a decision of the full board consistent with the procedures set forth in Section 3948 of these regulations.

*NOTE*

*Authority cited: Section 2755, Public Resource Code. Reference: Section 2774.1, Public Resources Code.*

*HISTORY*

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3945. Hearing Procedures – Notice

(a) At least 10 days prior to the hearing, the board shall give public notice as follows:

(1) Mailing the notice to the lead agency (if the board is not the lead agency), the operator subject

to the order to comply, and the director;

(2) Mailing the notice to any person who requests notice of the hearing;

(b) The notice of hearing shall include the following:

(1) The name of the operator subject to the order to comply;

(2) Identification of the proposed surface mining operation and a brief description of the location of the operation by reference to any commonly known landmarks in the area;

(3) A statement that the operator has been issued an order to comply with specific aspects of the Act;

(4) A statement inviting the operator, the lead agency, and the public to make statements at the hearing regarding the decision of board; and,

(5) The time, date, and location of the public hearing.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

#### HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

#### § 3946. Hearing Procedures – Record.

The record before the board at the public hearing shall be the administrative record submitted pursuant to Section 3942 of this article.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

#### HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

#### § 3947. Hearing Procedures – Sequence.

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the operator subject to the order;

(3) Statements on behalf of the director, or the board if acting as the lead agency;

(4) Statements on behalf of the public;

(5) Rebuttal on behalf of the operator; and

(6) Rebuttal on behalf of the director, or the

board if acting as if the lead agency;

(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the board at least five days prior to the hearing.

(d) The public hearing shall be recorded.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

#### HISTORY

1. *New section filed 10-1-2002, operative 10-31-2002 (Register 2002, No. 40).*

#### § 3948. Hearing Procedures – Determination.

Following the public hearing, the board shall determine whether, based on the record before it, the evidence before the director for orders issued by the director, or the board for orders issued by the board, substantially supports the basis for the order at the time the order was issued. If the board finds that the evidence in the record supports the issuance of the order, the board shall uphold the order and any effective date contained in the order. If no effective date is contained in the order, then the board shall set a date upon which the order takes effect. If the board finds that the evidence in the record does not substantially support the order, then the board shall not uphold the order and shall notify the director of the specific reasons for not upholding the director's order. Notification of the board's determination shall be made by certified mail or personal service to the operator and the director within 15 days following the regular business meeting of the board at which the determination is made.

#### NOTE

*Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

#### HISTORY

1. *New section filed 10-1-2002, operative 10-31-2002 (Register 2002, No. 40).*

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